



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **21ST DAY OF FEBRUARY, 2018** AT 10:00 A.M.

THOSE PRESENT WERE: Mayor Wheeler, Presiding; Commissioners Eudaly, Fish and Saltzman, 4. Commissioner Saltzman teleconferenced.

Commissioner Eudaly arrived at 10:12 a.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Lauren King, Deputy City Attorney; and Jim Wood and John Paolazzi, Sergeants at Arms.

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

Due to inclement weather, the meeting began at 10:00. THOSE PRESENT WERE: Mayor Wheeler, Presiding; Commissioners Eudaly, Fish and Saltzman, 4. Commissioner Saltzman teleconferenced.	Disposition:
COMMUNICATIONS	
153 Request of Sandra Shotwell to address Council regarding Eastmoreland Neighborhood Association spending funds to pursue Historic Designations (Communication)	PLACED ON FILE
154 Request of Brian Houle to address Council regarding Bureau of Transportation Greenways diverter to be installed at 50th and SE Lincoln St (Communication)	PLACED ON FILE
155 Request of Lisa Brauckmiller to address Council regarding Bureau of Transportation Greenways diverter to be installed at 50th and SE Lincoln St (Communication)	PLACED ON FILE
156 Request of David Kif Davis to address Council regarding suppression of First Amendment rights of protesters, citizens, copwatchers, citizen journalists, whistleblowers and activists by the City (Communication)	PLACED ON FILE
157 Request of Kevin Fitts to address Council regarding the City's relationship with Home Forward (Communication)	PLACED ON FILE

<p>CONSENT AGENDA – NO DISCUSSION</p> <p>Mayor Ted Wheeler</p> <p>Bureau of Planning & Sustainability</p>		
<p>*158</p>	<p>Authorize application to the Oregon State Historic Preservation Office for a Certified Local Government Grant in the amount of \$12,500 to support the City's historic resources program (Ordinance) (Y-4)</p>	<p>188818</p>
<p>Office of Management and Finance</p>		
<p>*159</p>	<p>Pay property damage claim of Randall Wilkes in the sum of \$10,715 involving the Portland Police Bureau (Ordinance) (Y-4)</p>	<p>188819</p>
<p>*160</p>	<p>Authorize the Director of the Bureau of Revenue and Financial Services to execute special appropriation grant agreements (Ordinance) (Y-4)</p>	<p>188820</p>
<p>*161</p>	<p>Authorize a grant agreement with The Boys and Girls Club of Portland Metro in an amount not to exceed \$75,000 for The Rockwood Boys and Girls Club capital campaign (Ordinance) (Y-4)</p>	<p>188821</p>
<p>*162</p>	<p>Authorize a grant agreement with Fair Housing Council of Oregon in an amount not to exceed \$34,480 to support the Hate has No Place in Housing project (Ordinance) (Y-4)</p>	<p>188822</p>
<p>*163</p>	<p>Authorize a grant agreement with OPAL Environmental Justice in an amount not to exceed \$17,500 to support the Bus Riders Unite Against Hate Project: Trained Experts in De-escalation on Portland's Transit System (Ordinance) (Y-4)</p>	<p>188823</p>
<p>*164</p>	<p>Authorize a grant agreement with The Portland Opportunities Industrialization Center plus Rosemary Anderson High School in an amount not to exceed \$15,000 for their Violence Intervention Program (Ordinance) (Y-4)</p>	<p>188824</p>
<p>165</p>	<p>Create a new represented classification of Parking Code Enforcement Officer, Lead and establish an interim compensation rate for this classification (Second Reading Agenda 146) (Y-4)</p>	<p>188825</p>
<p>Commissioner Nick Fish</p> <p>Bureau of Environmental Services</p>		
<p>*166</p>	<p>Authorize the Bureau of Environmental Services to reimburse property owner at 131 NE Holland St for sewer user fees paid to the city in the amount of \$4,376 (Ordinance) (Y-4)</p>	<p>188826</p>

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Commissioner Dan Saltzman

Bureau of Transportation

***167** Authorize a contract with the lowest responsible bidder for the West Burnside Multimodal Project for an estimated \$1,949,125 (Ordinance)
(Y-4) **188827**

***168** Authorize an Intergovernmental Agreement with Oregon Department of Transportation for the right-of-way services of the NE Columbia Blvd: Cully Blvd & Adlerwood Rd project (Ordinance)
(Y-4) **188828**

Portland Fire & Rescue

169 Accept and appropriate a grant in the amount of \$15,500 from Oregon State Fire Marshal 2017 Hazardous Materials Emergency Preparedness Grant for intermediate and advanced air monitoring training for the Portland Fire & Rescue HazMat Team, and authorize an Intergovernmental Agreement (Ordinance) **PASSED TO SECOND READING FEBRUARY 28, 2018 AT 9:30 AM**

City Auditor Mary Hull Caballero

***170** Assess property for system development charge contracts, private plumbing loan contracts and safety net loan deferral contracts (Ordinance; Z0828, K0170, K0171, T0189, Z0829, W0059, P0149, P0150)
(Y-4) **188829**

REGULAR AGENDA

City Attorney

171 Authorize the City Attorney to take legal action against certain opioid manufacturers and distributors and other appropriate parties to recover public funds that have been and will be expended by the City as a result of the manufacture and distribution of prescription opioids (Resolution introduced by Mayor Wheeler and Commissioners Eudaly, Fish, Fritz and Saltzman) 25 minutes requested **37344 AS AMENDED**
Motion to adopt Novick amendments regarding the Sackler family: Moved by Fish and seconded by Eudaly. (Y-4)
(Y-4)

Mayor Ted Wheeler

Office of Management and Finance

172 Accept recommendations of The Special Appropriations Committee for grant awards from the \$350,000 allocated to competitive special appropriations program during the Fall Bump process (Previous Agenda 125) 30 minutes requested **CONTINUED TO FEBRUARY 28, 2018 AT 9:30 AM**

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Commissioner Nick Fish		
Bureau of Environmental Services		
173	Authorize a competitive solicitation and contract with the lowest responsible bidder and provide payment for construction of Portsmouth-University Park Sewer Rehabilitation Project No. E10335 for an estimated cost of \$4,110,000 (Second Reading Agenda 151) (Y-4)	188830
Water Bureau		
174	Authorize a contract with Stantec Consulting Services, Inc. in the amount of \$749,190 for the N Willamette Blvd Bridge Main Replacement Project (Ordinance) 10 minutes requested	PASSED TO SECOND READING FEBRUARY 28, 2018 AT 9:30 AM
Commissioner Dan Saltzman		
Portland Fire & Rescue		
*175	Authorize application to the Oregon Office of State Fire Marshal for a grant in the amount of \$62,924 for Flammable Liquids Bulk Storage Specialty Training for Portland Fire & Rescue HazMat Technicians and Station 24 Firefighters (Ordinance) (Y-4)	188831
City Auditor Mary Hull Caballero		
176	Update Auditor Code to conform to May 2017 Charter amendments that protect the Auditor's independence and add a duty; amend Auditor Code following passage of new state law that preserves City's privilege when information is disclosed to Auditor for the purposes of an audit or investigation (Ordinance; amend Code Chapters 2.12, 2.14, 3.05, 3.21 and 3.77) 10 minutes requested	PASSED TO SECOND READING FEBRUARY 28, 2018 AT 9:30 AM

At 11:08 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **21ST DAY OF FEBRUARY, 2018** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Wheeler, Presiding; Commissioners Eudaly, Fish and Saltzman, 4. Commissioner Saltzman teleconferenced.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Linly Rees, Chief Deputy City Attorney; and Jim Wood and John Paolazzi, Sergeants at Arms.

<p>177 TIME CERTAIN: 2:00 PM – Appeal on behalf of the Pearl District Neighborhood Association against Design Commission’s decision of approval for design review with modifications and concurrent greenway review for the Fremont Apartments, a 17-story mixed-use building at 1650 NW Naito Pkwy (Hearing introduced by Commissioner Eudaly; LU 16-278621 DZM GW) 2 hours requested</p>	<p>Disposition:</p> <p>CONTINUED TO MARCH 7, 2018 AT 10:15 AM TIME CERTAIN</p>
<p>DUE TO LACK OF AGENDA THERE WAS NO 2:00 PM MEETING THURSDAY, FEBRUARY 22, 2018</p>	

At 5:40 p.m., Council adjourned.

MARY HULL CABALLERO
Auditor of the City of Portland



By Karla Moore-Love
Clerk of the Council

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

February 21, 2018
Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: ***** means unidentified speaker.

February 21, 2018 9:30 am

Wheeler: Welcome to the February 21, 2018. Commissioner Saltzman is interested in participating by phone for this meeting so there is some formal announcements that need to be made prior to that. First pursuant to pcc 3.02.025 commissioner Saltzman is participating by telephone because of weather conditions and without commissioner Saltzman's participation by telephone there is not a sufficient number of council members present to conduct all of the city's business. This morning the officer, the office of commissioner Fritz was contacted to inform her that she could participate in this council hearing by phone. Commissioner Fritz is unable to do so today. Do any council members who are physically present object to having commissioner Saltzman participate by phone? That's you, any objections nick?

Fish: I waive my objections.

Wheeler: He waives his objection there are no objections, please call the roll.

Fritz: Fish: Here. **Saltzman: Eudaly:**

Wheeler: Here. Council meets on a regular basis to conduct the city's business preserving order and decorum allows everyone a chance to provide meaningful input to the city council to maintain decorum and make sure that everybody feels welcome and respected and safe. We have some basic rules, to participate in council meetings you may sign up in advance with the council clerk for communications to briefly speak about any subject that you would like to speak about. You may also sign up for public testimony on resolutions and first readings of ordinances. Your testimony must address the matter being considered at the time. Please state your name for the record. We don't need your full address. Please disclose if you are a lobbyist. If you are representing an organization, please identify that organization. The council presiding officer, that's me today, determines the length of the testimony. Individuals generally have three minutes to testify unless otherwise stated. When you have 30 seconds left the yellow light goes on in front of you when your time is up the red light goes on. Please finish your comments by the time that the red light goes on. Disruptive conduct such as shouting, interrupting testimony or council deliberations is not allowed for obvious reasons. If there are disruptions, a warning will be given that further disruptions may subject a person to an ejection for the remainder of the meeting. If you are being ejected and fail to leave you are subject to arrest for trespasses, simple thumbs up or down is sufficient. If you like something or don't like something respectively. So with that, commissioner Fish?

Fish: we have a lot of people in chambers today, which means that they were able to get from their homes to city hall. We have -- we are going to have three members of council here this morning which means that they were able to get from their homes, you and I were able to get here from a place where the roads are challenged when we have a snow storm. Can we take a moment to acknowledge and thank commissioner Saltzman and all the hard working members of the Portland bureau of transportation for their work over the last 24 hours?

Wheeler: That would be a great thing to do and I would like to second that. We have had crews out since yesterday in fact, before that time. They have been out all night, and we

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have had people working and volunteering in our homeless shelters including severe weather shelters that we have opened for the occasion. We have our utility bureaus working around the clock to make sure that our water and sewer services continue to be maintained and I want to join commissioner Fish in thanking transportation commissioner Saltzman and utilities commissioner Fish and all of our fantastic city employees for their hard work. Karla if I am looking at this screen correctly do we not have --

Moore-Love: Just your screens are not working.

Wheeler: Just ours, but we have closed captioning working? Why don't we go ahead and start with the communications, please, and I also want to thank all the council staffs who are present in chamber today, too, thank you chiefs. Good to see you here as a group.

Item 153.

Wheeler: Good morning, thank you for being here.

Sandra Shotwell: Good morning Mr. Mayor and counselors. My name is Sandra Shotwell I am fortunate to have been a resident of Portland for 25 years in east Moreland. If I were to move here today I don't think that I could afford my home so happy to have purchased it earlier and housing and the pressure on housing and concerns about affordability are really the issues that I know are important to you and that I want to address. There is an odd situation which occurs because of an inappropriate connection between an honorary national historic register designation, which comes with voluntary guidelines, and Oregon law. On the second page of the handout, which I hope you have in front of you, is an Oregon law which was designed to ensure that homeowners are not placed in historic designation district unless they consent. There was at the time an exception because the national register historic district is a voluntary and honorary designation, and they didn't want to prevent neighborhoods from being able to go in there. I believe it has created a loophole that the people have taken advantage of to place their neighbors into historic districts which come with design, historic resource guideline review, demolition review, it adds time and expense and delay to taking care of your older home. In our district, for example, our board used \$50,000 plus of neighborhood association moneys only wealthy neighborhoods can afford this consulting that's required and applied to the national park service for a designation. It was not something where they necessarily were sure that they had support of the neighborhood, when they took a vote three months later after submitting the application in fact, two-thirds of the neighbors voted. That's a good turnout on an election and it was close but more people were opposed to the district than supported it. They went forward. Why anyone literally I could put one of your neighborhoods into a national historic district if I appropriately reviewed it because it's meant to be honorary. It's meant to be voluntary and unfortunately in Oregon the only state in the country it comes with resource review, which as I said adds to the cost of taking care of an older home. Our local districts in contrast, you actually have to get people to say yes, I would like to be part of this district and those, those also come with guidelines. I will point out one distinction, demolition review is a funny issue, people don't like to see these older homes demolished. Unless I think that few of us do unless they are really in bad shape, and sometimes they need to be. So demolition review is something that many people like, I think a broader category of people might like but our local historic districts don't have it. So the combination of historic district review, I have made a couple of requests to the council. If you look at them. I would appreciate it if when the national designation comes up the council would agree that there should only be voluntary guidelines, which is what the national park service suggested.

Fish: First can I say thank you very much for the handout. When we get a handout that's as clear as this and has the attachment it makes our job easier and you have raised a couple of issues that frankly I am not as clear about, the distinction between the two kinds

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of designations and where the rules are so I think that we're going to want to dive into this a bit and make sure that we understand it and have staff explain this to us and then get back to you. Thank you for highlighting this issue.

Shotwell: Thank you for your attention.

Wheeler: I appreciate it. Thank you. Next individual, please Karla.

Item 154.

Wheeler: I don't see Mr. Houle. Next individual please.

Item 155.

Fish: May I make a suggestion? It's possible that both these individuals were not able to get here because of transportation related issues and the snow storm and I would urge us in this instance to consider if they choose to add them to next week's agenda even if it means suspending the rules and having two additional public comment.

Wheeler: I would be fine with that. It's my understanding that Mr. Houle and Ms. Braukmiller were plan on testifying together on the same subject, so I'd be fine with that.

Fish: Can we suspend the rules and add two?

Moore-Love: We need four people to suspend the rules.

Wheeler: Let's do this, we will work with them to bring them back at a later date.

Moore-Love: That's what the policy says, we give them the first available spot.

Wheeler: Very good. Next individual, please.

Item 156.

Wheeler: I do not see Mr. Davis. Next individual please.

Item 157.

Wheeler: Good morning.

******:** Good morning.

Kevin Fitts: Good morning mayor wheeler and commissioners. My name is Kevin Fitts. I have a nonprofit called the Oregon mental health consumer association but I'm not representing them, just speaking as a citizen of Portland.

Wheeler: Thank you.

Fitts: I have three minutes, and I just want to take ten seconds to say you know, I am particularly impacted as low income person living with severe mental illness of the burdens of economic issues, etc., et cetera, and struggle to get my voice heard in policy. I am impacted significantly in the last couple of years by the death of my parents, the death that my nephew Garrett, by opioid overdose, my other nephew in eastern Oregon state prison due to eviction and opiate problems and my sister-in-law suffering with acute leukemia in a Swedish hospital in downtown Seattle. So, they are in my thoughts I came here to talk to you but the issue of the city of Portland's oversight and connection to the public housing authority called "home forward." in 1992 you signed an agreement, intergovernmental agreement with then home for housing authority of Portland to give them some authority to run the public housing authority in Portland with issues of your appointing four of the governing board of that and the Multnomah county, too, and the city of Gresham, too. It is the issue that I have currently, as a tenant of this public housing authority and being able to get my needs met consequentially from a staff that is challenged by tremendous turnover, stress and high client loads. I have filed a complaint with the housing and urban development office of fair housing in Seattle and I am seeking an attorney to seek support for what I see as discrimination around my rights as a tenant. I have also reached out to Dennis Richardson's office and representative Walden's office for support at a federal level with hud and the state level with the oversight and audit of that public entity, the home forward. So to that end I would like to ask for your support with your interim housing director to see if we could get somebody to help me deal with some of these issues. I don't want to err this laundry publicly but some of these issues I am having as a tenant and

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getting my needs met. I would like us to take the last ten seconds and have a moment of silence for people who are in pain and suffering with health issues or opioid issues or houselessness issues.

Fish: Mr. Fitts can I ask you a question? As you know there is a position on the board of directors for home forward set aside for a resident, and that's a very important position because the perspective of the resident is often, I think, overlooked or shortchanged in the decision-making. Have you considered at some point whether you would put your name forward and nomination for a -- for that position in the future?

Fitts: It's an interesting question. One of the things that I do in my day job is I work to loosen the grip of what I call benevolent paternalism. One of the issues that we are facing nationally is the description between what we call the administrative bureaucratic blue church on the democratic side and what they call on the republican side the grassroots activists of the red religion. So what we are trying to try to challenge is how do we get the voice of the consumer more involved in these policy and governance boards that moves beyond just tokenism or, you know, becoming a bureaucratic mascot or an administrative lap dog and so some of those things we're trying to challenge. Some of those things I have considered I have so many other things to do legislatively around mental health and consumer issues I have thought about it. So I have issues with -- they have to have an administrative plan they are supposed to show and let all of the tenants know about every year. They are supposed to publish when their resident advisory council meets to the public every other month, stuff like that, and I know that they are short staffed and they are stressed. The epidemic of houselessness and homelessness and trying to provide housing services for people in poverty with disabilities is a tall order.

Fish: And I am not here to alibi for home forward, but I will tell you that given the president's budget that he just put on the table, the president's budget eliminates for example any capital funding to housing authorities across the country to maintain the stock of public housing, wipes it out. In order to cover the cost or to pay for the tax cut and the wall. It severely cuts back on voucher programs, which we desperately need, and since you mentioned the office of fair housing it significantly cuts funding for fair housing. Overall it proposes an 18% cut in hud which would be a wipeout from our point of view. So any way thank you for coming forward today, and I am sure the city and the housing commissioner can get more details about your complaint.

Fitts: Just a follow-up, it was particularly under Reagan who cut 60% of hud funding from the federal budget a long, long time ago, and it has been no add-back since and is a disastrous thing.

Fish: One final point on this people sometimes, and more now more than ever have raised the question what should be the federal role in housing. No one questions the fact that we have \$200 billion in foregone revenue by offering tax breaks to people who don't need it, and that's the value of providing people like bill gates with a deduction for his mortgage and his taxes. Mr. Gates does not need that break, but that's to the tune of \$200 billion. Our total federal budget to help people shut out of the market place which is over 50 million Americans, is 40 billion so our priorities are completely reversed and this budget will do more damage so thank you for joining us today thank you.

Wheeler: Karla have any items been pulled from the consent agenda?

Moore-Love: We have had no requests.

Wheeler: Please call the roll.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wheeler: Aye. The consent agenda is adopted. Call 171.

Item 171.

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Wheeler: So this is a resolution being brought forward by all five members of the Portland city council and that should underscore the importance of this issue. As everyone is keenly aware and our last communications just highlighted America is in the throes of an opioid epidemic. According to the CDC opioids, including prescription opioids killed more than 42,000 people in 2016. That's more than any year on record and 40% of those deaths were due to prescription opioids. That's more than any year on record. I want to underscore that point, and my suspicion is that when 2017 is tallied, the results are going to be even worse. This crisis is felt acutely here in the state of Oregon. I want to give you a statistic that I heard for the first time just last week. Last year in the state of Oregon 55 opioids were prescribed for every man, woman, and child in the state of Oregon. 55. So if you did not use your 55, somebody else did and as significant as that number is, 55 for every man, woman, and child in the state of Oregon, that's actually down from its high of about 75 prescriptions for every man, woman, and child in Oregon. According to the Oregon health authority three Oregonians die every week due to prescription opioid use. Further we know that opioid abuse is a major contributor to homelessness. With chronic homelessness on the rise in our community and many of those experiencing homelessness reporting addiction issues. Local jurisdictions like the city of Portland are on the front lines of the opioid crisis. We're investing record amounts to address homelessness. We have committed to dramatically increasing the number of supporting housing units in our community. Many of which will go to those suffering addiction issues. Our police officers respond to an increasing number of drug related calls for service. Our firefighters provide life saving medication to overdosed victims. Opioid addiction can even contribute to higher care costs for the city. At the same time drug manufacturers have shown a reckless disregard for the danger their production pose. Drug companies continue to take in profits while cities like Portland are faced with significant budget short-falls. This resolution will authorize action by the city to recoup some of the funds we spent due to opioid addiction while holding drug manufacturers accountable. This is a much needed step to help stem the tide of opioid addiction in our community. Thank you, and welcome.

Naomi Sheffield, Deputy City Attorney: Good morning mayor wheeler and commissioners. A lot of what I planned to say I think that the mayor just shared, but I'll go over.

Wheeler: Feel free to say it again. It bears repeating.

Sheffield: My name is Naomi Sheffield, I am a Deputy city attorney, I handle conflict litigation for the city, and I am here to discuss the resolution authorizing the city attorney to proceed with affirmative litigation against both the opioid manufacturers and distributors. I will cover three areas, and then address any questions you have if I am able to. So I wanted to first address what the opioid epidemic is and how it has affected Oregon and Portland. The role that prescription drug manufacturers and distributors have played in the opioid epidemic and the cause of action the city might bring and the current, how the litigation would likely play out. So the opioid epidemic broadly speaking is characterized by the significant increase in abuse of prescription and non-prescription opioids since about 2000. The national survey for drug use and health in 2010 showed approximately 12 million Americans reported using painkillers for non-medical purposes. This abuse has led to a three-fold increase in overdosed deaths in the last 15 years, and as mayor wheeler was saying a significant increase just in total opioid prescription overdoses as well during that period and Oregon has similarly seen an increase in overdosed hospitalizations and deaths during this period. Across the country, states, counties, cities, public hospitals, families and others have borne the cost of this epidemic. The state and local governments are forced to pay directly for increased prescription opioids, medical treatment and addiction services, for drug treatment and they also indirectly pay the cost for increased

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crime, housing issues, and jails. Billions of dollars are spent annually across the United States to address the epidemic, and these costs don't take into account the economic and non-economic impacts that the epidemic has had on communities. The city of Portland has incurred costs as Mayor Wheeler discussed in several areas including but not limited to Portland fire and rescue, and 2016 responded to 3,475 calls for overdoses and administered 400 doses of naloxone, which is the medication designed to reverse an opioid overdose, naloxone. Additionally 50%, approximately 50% of the calls addressed by Portland police bureau's drug and vice division related to drugs are related to opioids. The city also as you are all well aware invests millions in the joint office of homelessness services, which in addition to many of the programming that it provides, provides supportive housing services that assist people living with drug addiction and finally the city directly incurs costs as a self-insured provider for its employees and their families so paying for prescription drugs and for the cost of treatments that employees and family members who are addicted to opioids. The public health crisis corresponds with the massive increase in the prescription opioid sales. I actually think that Mayor Wheeler's numbers might have been for Multnomah county because I think that Oregon actually peaked at 101.2 prescription drugs for every 100 people in the year 2010.

Wheeler: So you are saying that I was being too optimistic.

Sheffield: Well Multnomah county, I think, were the numbers. I don't have Multnomah counties right here but I am sure that that's right.

Wheeler: Either way, it paints a dire picture.

Sheffield: It has been high and increased peaking around 2010 to 2012 around the country and in Oregon. Prescription opioid manufacturers have each made and continue to make billions of dollars annually on the sale of prescription opioids. The same manufacturers were the ones who encouraged the use of long-term use of opioids to treat chronic pain, and at the same time downplayed the risk of addiction related to higher dosage and long-term use of prescription opioids. These manufacturers marketed to doctors and patients encouraging a greater use of opioids to address non-cancer pain. The distributors who are also the subject of the resolution, there are three distributors who dominate the market share and they all have a legal obligation to monitor the ordering and dispersal of the prescription opioids to make sure that they are not diverted into the community, and all three major manufacturers have had action taken against them by federal and state agencies due to their failure to uphold those obligations to monitor and report the diversion of opioids or suspicious behavior. The litigation, hundreds of cities, I think, about 370 at this point, have, and counties around the country, have sued the manufacturers and distributors in federal court or in state court and have been removed, and these cases in December of 2017, a multi-district litigation was formed and these cases were transferred to the northern district of Ohio. So if the city were to file suit we would likely be transferred into the multi-district litigation in the northern district of Ohio. The cases set forth various causes of action, depending on state law and the harms faced by the individual jurisdictions, but the city would likely allege cause of action for public nuisance, negligence and rICO and Oregon rICO. The multi-district litigation is moving forward quickly. I think there is an expectation that the judge would like to push for a resolution, and so action at this point in time would be very timely. I am happy to answer any questions that you might have.

Fish: I have a couple questions. So the way that we structured this particular litigation is that we would handle it in-house?

Sheffield: We would not. We would -- there are a number of outside firms, and one of the firms we worked with before for the Monsanto litigation has about 60 jurisdictions so we would have an outside firm that has a number of other cases going forward.

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Fish: We would piggy-back off of the existing, and then our city attorney's offers would monitor the litigation?

Sheffield: Correct.

Fish: You mentioned that there is a number of claims which have been asserted including rico, which I believe is a criminal conspiracy charge as well as some other related claims. What are the potential damages that we can recover and what do we have to prove as a city in terms of getting a recovery?

Sheffield: So just so you know the rico charge, there is criminal rico but this would be civil charges.

Fish: Civil conspiracy.

Sheffield: Yes, exactly. So the potential, I mean, I think that the potential damages that the city has looks to be in the millions of dollars, and the recoverable damages will vary based on the number of factors. First the total damages across the united states probably far exceed what the distributors and manufacturers are ultimately going to be able to pay so there is going to be some, if there is a settlement, some reduction because of that, but in terms of the damages, again, what I discussed are the likely damages, and I think that we are looking at a few million dollars annually and looking backwards, so for a nuisance claim we would be proving that the, sorry, that the city would prove that they created, sorry, for the negligence claim they would be proving that they had an obligation to -- they had an obligation to kind of meet certain standards, and they acted negligently and caused the harm, and I think for the manufacturers we're looking at a lot of what they have said and one of the positive actions that others have brought are the consumer deception claims so a lot of the advertising and selling and pushing of these drugs to doctors and patients, I think that is the basis of a negligence claim that kind of pushing it has been negligence.

Fish: Also is the attorney general involved in this litigation?

Sheffield: So my understanding right now is the Oregon attorney general is involved in a multi-state investigation under the consumer protection act. I don't believe that they filed suit. Some states have filed suit but I don't believe that Oregon has at this point. The state would not be in federal litigation because the state -- it would not be removed to federal court.

Fish: What we are talking about is a multi-pronged approach to recover damages on the basis of the harm caused by the misconduct of these companies?

Sheffield: Correct and obviously Multnomah county has filed because of their harms they have been removed to federal court and transferred to the northern district of Ohio. So it's multi-pronged and then multi-theory. The state will likely pursue different, a different legal theory because they have different legal theories available to them.

Fish: I just want to make one personal observation because I have, you know, I am currently with my health challenges I have about a three pages of single spaced drugs that I take a look at various times, and something that I have learned but the drugs that really pack a wallop is the smaller the pill sometimes the bigger the mischief and oxycontin is a small pill, and yet does -- has enormous consequences when you take it, another example of that is steroids. Steroids are a tiny little pill which completely turns your nervous system upside down, and it is remarkable how liberally they are prescribed in our country for various laudable purposes, but they are given out easily and they have huge impacts on people's behavior. So thank you.

Wheeler: Very good. Commissioner Saltzman did you have any questions?

Saltzman: No, I didn't.

Wheeler: Very good. Public testimony. Does that complete your presentation?

Sheffield: That's all.

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Wheeler: Very good, public testimony?

Wheeler: Public testimony on this item Karla, could you confirm the main monitors?

Moore-Love: It is still working right here, they are still working on it.

Wheeler: Good. Good morning Mary.

Mary Sipe: Good morning.

Wheeler: Why don't you start us off today.

Sipe: Mary sipe. Deadliest drug epidemic in u.s. history that's what we're dealing with. For years while working in the health care field I watched the opioid manufacturers motivated by their obscene proliferates, push their highly addictive dangerous drugs using deceptive marketing to encourage the physicians to overprescribe. Shortly after they were approved by the fda the drug manufacturers convinced the medical community to establish pain as a vital sign. Each time a patient is seen they are asked to rate the pain and how effectively their provider treated their pain. Physicians and hospitals were evaluated on how effectively they treated patients' pain, pain clinics began cropping up everywhere. The drug manufacturers knowingly misrepresented the serious risk of addiction. As a result of this corporate greed we now are in the midst of the worst drug epidemic in American history. Thousands of unsuspecting victims of the corporate greed are now sleeping on the streets, their lives destroyed. I commend the city council for bringing this resolution forward. It's time that these manufacturers and distributors were held accountable. The cost of the epidemic should not be on the shoulders of taxpayers. One would think that our regulatory agencies would protect citizens from this unconscionable behavior but that's not the case. Last October 60 minutes did a story about how the opioid crisis was allowed to spread aided by congress, lobbyists, and a drug distribution industry that shipped almost unchecked hundreds of millions of pills to rogue pharmacies and pain clinics. Joe rancini who ran the dea's office of diversion control, the division that regulated and investigates pharmaceutical industry reported how the drug industry used their money and influence to pressure top lawyers at the dea to take a softer approach and manage to push him out. He tells of how a parade of dea lawyers switched sides and jumped to high paying jobs defending the drug industry and seriously undermining the work that the enforcement agency did. This past Sunday 60 minutes did another story about how opioid-makers gave \$10 million to advocacy groups which, in turn, promote these medications. In April of 2016 congress effectively stripped the drug enforcement administration of its most potent weapon, against large drug companies suspected of spilling prescription narcotics onto the nation's streets. The chief advocate of the law that hobbled the dea was representative tom Marino, a Pennsylvania republican. Marino was president trump's nominee to become the next drug czar. He spent years trying to move the law forward in congress. According to federal filings \$120 million was spent by major drug industry companies, distributors and chain drugstores and pharmaceutical manufacturers lobbying congress on this bill and other legislation. With all the money and influence supporting the drug industry this is going to be a tough battle but we have to start somewhere. Thank you.

Wheeler: Thank you. Good morning.

Steve Novick: Good morning mayor and commissioners. My name is Steve novick, and I am here today because I lost my brother Misha to oxycontin. I am here to ask you to amend this resolution to add language holding some individuals accountable. "the new Yorker" and esquire magazines recently detailed the extensive personal involvement of members of the Sackler family, the founding family of Purdue pharma in the deceptive and aggressive marketing of oxycontin. The Sackler family through contributions through cultural and educational institutions including the Guggenheim, the metropolitan museum of art and Harvard and Yale universities have their name plastered all over those storied institutions. There is a movement to try to get those institutions to remove the Sackler

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family name from those buildings, programs, and professorships. I am here to ask you to join that movement. I don't see why the Sackler family isn't in prison but public shaming seems to be a way that we can address them, so the amendment that I propose that Karla distributed is to add a couple of whereas and be it further resolved. Whereas members of the Sackler family which founded Purdue pharma, makers of oxycontin, including Richard Sackler, were deeply and personally involved in the deceptive marketing of oxycontin, whereas the Sackler family name has been lionized by numerous major cultural and educational institutions including the metropolitan museum of art, Guggenheim and Harvard and Yale universities and be it further resolved the council urges all cultural institutions to remove the Sackler family name from any and all exhibits, buildings and professorships and programs where it is featured and refuse any new contributions from the Sackler family.

Fish: As a courtesy to a former colleague who offered an amendment I would like to -- I would like to move the amendment ask for a second so there can be council discussion after the testimony.

Eudaly: Second.

Wheeler: Commissioner Fish moves and commissioner Eudaly seconds.

Novick: I have said what I intended to say, I really appreciate the motion and the second, and I would very much appreciate the city, the city council taking this action. These are people who -- the Sackler family is a family of mass murderers. They recklessly promoted this drug knowing it to be dangerous and as a result people died in many states, that's part of the definition of second degree murder. Apparently they are not going to be prosecuted for second degree murder but they -- it's outrageous that they have their names lionized in so many cultural and educational institutions, and I hope that many thousands of people and institutions throughout the country will call on those institutions to remove the Sackler family name from their buildings, programs, and professorships. So as a brother of Misha, who died of an oxycontin overdose in May of 2007, I ask you to take this action to in some way hold these individuals personally responsible for their actions.

Wheeler: Appreciate it. Thank you. Good morning.

Shedrick Wilkins: First I have a head cold, Mr. Mayor I can't hear what people were saying that's why I was not here last week so I should take some Sudafed, which is not an opioid, I guess, I don't know. Anyway I do believe that pills, people that take pills, this is the part of the philosophy of rampant materialism that you think that if you have a lot of stuff, like guns or pills, that you are having a better life, and this is not true. I don't like people when they say these pills are keeping me alive. I had a father-in-law that took oxycodone and Xanax, and he was high and didn't feel that he had walking pneumonia, he couldn't feel his own body, that's why you have pain, to feel yourself and feel what's going on. He's walking around high as a kite, no pain at all, and then he was too late, his lungs were too congested and that was it. So again it's rampant materialism and glad the presidency trying to make some statement that having a bunch of pills doesn't make your life any safer and don't tell me stuff like these pills are keeping me alive. Some may be keeping you alive and others are not keeping you alive and you can get a tolerance to drugs, you can take them, you have to have more and more. Even if they are prescription, you get, you know, you get a tolerance. So it's materialism and it's -- there are other branches of medicine like surgery and stuff like that. That's all I am going to say.

Wheeler: Thank you. Appreciate it. All three of you, thank you commissioner novick.

Moore-Love: The last person is wayne wignes.

Wheeler: Good morning.

Wayne Wignes: My name is wayne Wignes. Over the years I have seen a number of friends go down this road. Funny thing I have noticed is when a larger body of

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communities are allowed to form, they have a way of cleaning themselves up. This is a well-known principle upon which a.a. meetings are built on for example. On the streets I have seen it occur in a natural fashion and when it's broken up, no offense but by you guys it's not long after that you cannot recognize the person you have seen because there is nothing left for them to do but drugs and there's no one left to associate with but the wrong people. It's ironic how we rely on social service agencies that neatly divide people between old and young, homeless and nonhomeless, addict versus non-addict it's ironic because you might say that we were evolved to feed off of one another, you know the old gang vitality from the young learn from the old, the addict gains positive energy from a clean and sober and etc. People need help. I am sorry, people need each other, not help and they don't need someone pointing the finger at big pharma for their problems. Where have our meeting grounds gone to? What am I to do if I cannot normalizer the culture on-ramp the bar or the house party full of drugs is -- if I cannot normalizer that without becoming an addict myself. The only answer to that question is to point the finger at the people who happen to be selling us the pills. You remember the council know where I am coming from on this so two of you may understand why I see hypocrisy in it all, everybody wants change and privacy and everybody is willing to be organized in order to achieve it. Yet we remain the right to point the finger at the man who's organizing us, 90% of what it takes to keep the domesticated man happy is to grant him his own box the other 10% is what we call politics. That's where all the drama comes in. Let's blame wall street for our problems. Let's blame Donald trump and today we're blaming big pharma. There are a few things more important.

Fish: Pull back from the mic so we can hear you better.

Wignes: Sorry. The domesticated man's compulsion to blame somebody else for his own problems, but all these things, trump included, are cultural phenomenon that we helped to create every day just because you did not vote for him doesn't mean you did not help to make him president and just because you did not sell them a pill doesn't mean that you did not help to make them an addicted. I have a prediction to make. We let our strategy become one of pointing the finger at big pharma for our problems today. Tomorrow they will respond by finding a new way to make more money like they always do. Happy president's day, Portland.

Wheeler: Thank you. Is there anybody else, Karla?

Moore-Love: That's all who signed up.

Wheeler: Very good.

Fish: I move the amendment.

Wheeler: Commissioner Fish, you already moved it. It has been moved and seconded so we'll take a call of the roll.

Saltzman: Mayor before we call the roll can we hear from the attorney about her thoughts about the amendment?

Wheeler: Certainly.

Lauren King, Deputy City Attorney: So I checked with the attorneys handling litigation they don't have any concerns. I also confirmed normally we would not have something different to the title. I can't think of the technical term, but because it's a resolution not an ordinance it's okay to add this as well.

Saltzman: Okay. Thank you.

Wheeler: Very good. Call the roll on the amendment, Please.

Fish: Former commissioner Novick thank you for joining us today and for your very powerful testimony, and I am honored to support this amendment. Aye.

Saltzman: Thank you commissioner Novick for commissioner Novick for bringing this forward. Aye.

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Eudaly: Aye.

Wheeler: Aye. The amendment is adopted to the main motion call the roll.

Fish: Mayor wheeler thank you for taking the lead with the city attorney's office in bringing this forward and rallying all your colleagues to the cause. I have some prepared remarks that I want to share that are the product of work done by my chief of staff Sonia Schmanski and by our tribal liaison Laura john and I think that it's particularly important that we highlight another dimension of this epidemic that I would not have known about had Laura john our tribal liaison not shared this story with us. Of course I am proud of today's action and for the leadership that it shows and I am grateful that commissioner Novick has helped us to strengthen the resolution, but I want to highlight mayor briefly one aspect of this crisis that has been in my perspective underreported. Portland is home to the ninth largest native American population in the country. Our native community is to descended for more than 380 tribes and adds an incalculable richness to the city and region. This community is uniquely affected by the opioid crisis. The affiliated tribes of northwest Indians which represents 57 sovereign governments across the northwest united states held its winter convention in Portland last month. During that convention the group passed a resolution declaring quote, "support for tribal nations taking on big pharma to combat the opioid epidemic in Indian country", and I want to quote from two findings from their resolution. Quote, "whereas the opioid epidemic claims lives in such a way that cumulatively threatens to decimate our individual nations as the death rate of American Indians from opioid overdose is the highest of any racial demographics stealing the lives of 8.4 American Indians per every 100,000 in 2014" and "whereas the conduct of pharmaceutical companies has caused a health crisis in Indian country that threatens the health, welfare and economic security and political integrity of the tribal nations and their citizens," end quote. Powerful stuff. The opioid crisis commands our attention and our action. This lawsuit is about recovering damages for the cost we have incurred managing this issue and also makes an important public statement. Over the last generation the federal government has abandoned local communities time and time again disinvesting in affordable housing, homelessness services, crumbling roads and bridges and urgent public health crises ranging from pollution in our rivers to drugs on the streets. None of us in this room has the power to compel the federal government and in particular this administration to do the right thing and to appropriately regulate this industry, but we do have a voice and collectively our voices have power. Today I proudly stand with my colleagues and with the communities across the country calling for accountability and for action in the face of this crisis. Aye.

Saltzman: Aye.

Eudaly: Thank you mayor. I am also very pleased to see this come forward. Marketing and over prescription of opioids, is a truly despicable act of exploitation. It is mind boggling listening to some of these statistics and stories. Entities we trust with our health are preying on our pain and leaving awake grief, ruin, and untold costs to families and communities so I am pleased to vote aye.

Wheeler: Aye. The resolution is adopted as amended. Thank you everybody. It's my understanding that the presenters for item 172 are not here, is that correct? Can we move 172 to next week then? Do we need a time certain or can we just move it? We'll move 172. Why don't you read it, Karla, so people know what we are talking about.

Item 172.

Wheeler: Very good, 173 please.

Item 173.

Wheeler: And this is a Second reading. Is there any further discussion on this item? Please call the roll.

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Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wheeler: Aye. The ordinance is adopted. Next item 174 please.

Item 174.

Wheeler: Commissioner Fish.

Fish: Thank you mayor. We are pleased to be joined today by Teresa Elliott the chief engineer of the Portland water bureau who will give us a brief presentation on this matter. This ordinance would authorize the Portland water bureau to authorize a professional technical and expert contract for the Willamette boulevard bridge main replacement project. The consultant under contract would design and develop plans and specifications for a construction contract to replace the 20-inch cast iron pipeline crossing the Willamette boulevard bridge, which is in need of repair. I will give you a preview colleagues that this -- what seems like a dry matter issue is actually a lot more interesting and Teresa is here to walk us through it. Welcome.

Teresa Elliot, Bureau of Environmental Services: Good morning mayor.

Wheeler: Good morning.

Elliot: Good morning mayor and commissioners, for the record I am Teresa Elliott, chief engineer of Portland water bureau. I am talking about the seeking your approval for the professional technical and expert contract with Stantec for engineering services associated with the Willamette boulevard bridge main replacement project. We have an existing 20-inch cast iron pipe that is attached to the bridge that's owned by Burlington north Santa fe railroad company over the Willamette boulevard. The 20-inch pipe is sized at the margins between what we serve for the distribution system and our supply system, and this pipe is in poor condition. We made repairs a couple of years ago to tied us over while we did the permanent design and replacement of the project. This pipeline serves 5,000 customers in the north Portland St. John's and cathedral park neighborhoods as well as a bunch of commercial and industrial customers in the river gate area. The pipe also provides us an alternative connection to our 36-inch St. John's crossing of the Willamette river that serves the west side of Portland. This project will include a 24-inch pipe that will be -- we are taking it off the bridge and burying underneath the railroad tracks, we're going to bore under the tracks and we will increase our overall resiliency in the north Portland area. This solicitation we used the city of Portland's procurement methods for qualifications-based selection for pte contracts. We received two proposals, Stantec was the most qualified responsive proposer. Their contract amount is for \$749,190. They will be using seven sub-consultants, four of which are certified dmwesb consultants and they are expected to perform 20% of the work and meeting or exceeding the city's aspirational goals. We have a level of confidence for the project at this point since we're starting the design of low to moderate, once we finish the design we will be adjusting our cost estimates and adjust our level of confidence. This project will be constructed using the design, bid, build methodology and during design the project team will work with our outreach folks with the neighbors and the public that are affected by the project to minimize impacts to them, and as much as we can, and at this point we don't have any known concerns or issues with the neighbors and I am available to answer any questions.

Fish: One question, chief Elliott. You alluded to this in your comments but is it fair to say that when we have an opportunity to take a pipe of this significance and take it off of a bridge, in this case a railroad bridge, and instead bury it, that advances our resilience goals?

Elliot: Yes. Replacing the pipe advances the goals, but taking off of any bridge and burying it underneath is met by far the safer more resilient approach than actually having it attached to the bridge.

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Fish: We have a lot of pipes on the bridges for which we pay a fee. This happens to be a bridge owned by the railroads and so we're essentially for which we once upon a time paid a fee so we're decoupling the pipe from the bridge and burying it and we're upgrading it.

Elliot: That's correct. We will still pay a fee for crossing the railroad, but we are decoupling it from the bridge.

Fish: Thank you.

Wheeler: This is for the design work? Is that correct?

Elliot: That's correct.

Wheeler: Will you come back to the council or does this authorize you once the design work is completed to actually continue with the work?

Elliot: This authorizes us for engineering services during the design and the construction support services. We will be coming back to you for the construction contract which is in the \$4 million range.

Wheeler: What's the time frame for that?

Elliot: Probably 2020.

Wheeler: Any further questions on this item? Very good. And this is a first reading. I am sorry, public testimony on this item?

Moore-Love: No one signed up.

Wheeler: Very good. This is the first reading of a non-emergency ordinance it moves to second reading. Please call item 175. Thank you. Great presentation.

Item 175.

Wheeler: Very good, commissioner Saltzman did you have any introductory comments?

Saltzman: No introductory comments. I don't know whether anyone from fire and rescue is here?

Wheeler: Yes, they are standing by. Good morning.

Shon Christensen, Portland Fire and Rescue: Good morning mayor wheeler and commissioners, my name is Shon Christensen, the hazmat coordinator for Portland fire and rescue and I am here to discuss this agenda item with -- and answer any questions you may have.

Fish: Could you remind us where station 24 is?

Christensen: Station 24 is off of interstate boulevard near swan island. So they are set up for either ship board or for flammable liquid incidents.

Fish: Thank you.

Wheeler: Very good, any further questions? Do we have any public testimony on this item?

Moore-Love: No one signed up.

Wheeler: Call the roll.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wheeler: Aye. The ordinance is adopted. Thank you. Next item 176.

Item 176.

Wheeler: Very good, good morning.

Mary Hull Caballero, City Auditor: Good morning mayor and commissioners. I am city auditor Mary Hull Caballero, I am here today to close the circle on recent electoral and legislative successes for the city, which we set out to achieve more than a year ago. In May voters approved charter amendments that you referred to the ballot at my request and increase the auditor's office, one month later governor brown signed into law protections that the city pursued that will allow auditor says and investigators in the auditor's office access to city information without causing legal protections to be waived. The changes before you update city code to reflect the charter amendments which included allowing the auditor to seek independent legal advice, giving the auditor more autonomy over staffing

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decisions, designating the auditor as a contracting agency, and authorizing the auditor to submit directly to council budget requests based on the auditor's priorities. I am also asking you to codify the right of full access to information for -- to independent police review and the lobbyist and political consultant registration programs. This is a right that you have extended to audit services and the ombudsman through the charter amendments. I am asking you do the same for the other investigative functions in my office that exist only in code. Knowing that state law now protects the city's most sensitive information from disclosure. Before I take your questions allow me to repeat my thanks to you for the critical role the city council played in paving the way for voters to consider the charter amendments and pursuing the legislative change that both removed a barrier to our audits and investigations and strengthened the city's ability to protected legally privileged information. I commend this council for its commitment to accountability and transparency.

Fish: Is this the first time that you have appeared before council with your new council? Your new attorney?

Hull Caballero: Yes.

Fish: Shall we introduce him?

Hull Caballero: Yes. This goes Todd albert, he's the general counsel to the auditor's office.

Todd Albert, City Auditors Office: Good morning mayor and commissioners.

Wheeler: Good morning, it's good to see you again.

Fish: I liked him immediately when I met him. He did a stint as a public defender in Manhattan.

Wheeler: Very good. Welcome.

Albert: Thank you. Good to be here.

Wheeler: Any further questions for the auditor? Well, I appreciate the review that you have given me and my team. I think that these are common sense adaptations based on the public record we have established and the goals that we have established together. So I think that this is good work. Is there any public testimony on this item Karla before I move it?

Moore-Love: Yes. One person signed up. Dan handelman.

Wheeler: Come on up sir, good morning.

Dan Handelman: Good morning mayor and members of council, I am Dan handelman with Portland cop watch. We are not 100% clear but the difference between the existing code and what's happening with this in terms of the sharing of the confidential documents with third parties. We want to make absolutely sure, though, that the citizens review committee which is not mentioned in the code or the charter as having access to such confidential documents does not get shut out from being able to review the confidential documents that they are reviewing at this point. So I don't know if that requires another code change or another legal analysis of some kind, but it's of grave concern that I look through the existing code and I don't see anything that even says beyond the fact that they have to pass a background check for the crc has access to confidential files. So I just want to make sure that that's not affected. It's also important that the city attorney or the auditor's attorney came to the table. We had not realized that she had hired an attorney and it was once something that Portland cop watch and other people in the community have pushed for, for a long time to ensure that there is true independent by ipr. I am not sure if that's related to why the city attorney's office stopped sending a representative to crc meetings lately but it would be nice to get some public airing of why that's happened. Two months ago they said that they were not going to show up and two people showed up and one went away, and in this past month there was no city attorney at the crc meeting.

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It's helpful to have that for legal advice when they are deciding on the fate of the officers, whether or not they violated policy. So now I have a minute left so I am going to talk about what happened last week where the auditor had the oir group present the city council. First just for clarification that part of the ordinance was not included when the first ipr ordinance was passed. The city council had to direct city auditor Carrie Blackmer to add something about shootings and deaths and he decided to have those reviews done rather than let the crc have the appeals of deadly force cases, so that's another sensitive issue for the public, that we want to make sure that you keep that on your radar. It's also the fact that we were not allowed to give oral testimony is the first time in 15 years that we have not been able to do that on that matter and I think that it would be good for democracy if instead of making a blanket policy around public testimony for reports that the mayor ask the other members of the council whether or not they want to take public testimony, I think that there were a lot of people disappointed and I am very disappointed by the fact that the mayor's office offers put out that are saying there was not public testimony taken was untrue because we need -- we know we meant public testimony at the city council, and it is just not appropriate for putting out social media that there was untruth being spread around.

Wheeler: I will take that at face value. Again it is at the discretion of the presiding officers to whether or not the public testimony is provided. It has been my policy to accept public testimony for resolutions and first readings of ordinances, not reports or presentations, and the reason that I have stated for that is that we contract for a specific purpose for people to come back to us. They have an obligation to us to provide the information that we have asked for, and in fact, with the oir, they are charged with doing is reporting back to the city council. They could choose to do that simply by writing and sending us a report. I chose to have them provide that report in public so that people could hear what the conversation was, what the recommendations were, and what our questions were, and I further opened up the opportunity for public testimony through written, or excuse me, I opened up the opportunity for written testimony, and I assume that I will receive quite a lot of written testimony related to the issue, which we will digest. That was the call that I chose to make, and I will stand behind it. I would like to ask the auditor to come back to this commissioner Fish?

Fish: I want to add that we did get extensive written testimony from Portland cop watch and league of women voters and others. I found getting that testimony ahead of the hearing very helpful and it actually informed some of the conversation with the oir group so I appreciated the fact that there was written testimony and I think that it was helpful to the process.

Handelman: Commissioner Fish if I might point out.

Fish: It was a comment to the mayor.

Handelman: I understand but the council is not allowed to meet at a social function when you have a quorum and the only time that we can have a dialogue is in these chambers so cutting off the ability to have public oral testimony cuts out that ability to have that kind of interactive dialogue.

Wheeler: Thank you. Appreciate it. Madam auditor if you wouldn't mind the question was raised is there any retrenchment of current access that the citizens review committee would have or any intention to reduce their amount of access to documents as currently exists under the current ordinance?

Hull Caballero: No, the section of code that this amends does not apply to the citizen review committee section and also they operate off of confidential information, if you have ever gone to a crc meeting they are aren't allowed to say the officer's names so they have access to the investigative file and that is what they use to make a determination at the end of the hearing.

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Wheeler: Very good, I appreciate that and Mr. Handelman I will have legal counsel get back to you directly with regard to why they were not in attendance at last month's meeting. I don't know the answer to that question right off and I am not sure that the council here present in the chambers today would necessarily know the answer to that. So I will direct legal counsel to get back to you. Thank you madam auditor

Hull Caballero: I have the answer to that question.

Wheeler: Perfect. Excellent.

Hull Caballero: I discussed this with Tracy reeve and when someone from her office was attending the crc meeting they were there to answer questions about public meetings law, and what we decided was that if there was something that we would anticipate that would come up that they would need to be there and that we would notify them and the city attorney Reeve would send someone to that meeting but that they did not need to as a matter of course come to every meeting for that purpose. When a volunteer on the citizen review committee has a question they submit them in writing, and members of the city attorney's office respond to their questions about the case file in writing. So that's not being discussed in the open hearing.

Wheeler: Very good. Thank you for that clarification and for your presentation. Colleagues anything else? Very good. This is the first reading of a non-emergency ordinance. It moves to second reading. Thank you.

Hull Caballero: Thank you.

Wheeler: And we are adjourned until 2:00 p.m. Today.

At 11:08 a.m. council recessed.

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Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: ***** means unidentified speaker.

FEBRUARY 21, 2018 2:00 PM

Wheeler: This is the afternoon session of the Portland city council, prior to calling the roll commissioner Saltzman is unable to attend today's council session. His failure to participate would jeopardize the public interest, health, safety or well fair therefore unless there's an objection by any member of the council commissioner Saltzman will participate in the hearing by teleconference for the entire session. Commissioner Fritz was also provided the opportunity but she is unable to participate. Is there any objection to commissioner Saltzman participating by phone? Sorry, Dan, there's no objection.

Saltzman: All right.

Wheeler: Please call the roll.

Fritz: Fish: Here. **Saltzman:** Here. **Eudaly:** Here **Wheeler:** Here.

Wheeler: The purpose of council meetings is to do the city's business. I'm going to shorten this a little bit. This is a hearing. There will be the opportunity for people to testify. You should assume that when people testify not everybody will share the same opinion that you do. Our objective is to make sure everybody feels safe, welcome and respected in this chamber regardless of their viewpoint or perspective. For that reason we ask people not to applaud nor to boo. Anyone a simple thumbs up is good or thumbs down if you don't like what you're hearing. Disruptions of people's testimony or council deliberations is not allowed. If anyone disrupts either people trying to testify or the city council trying to deliberate, you'll be asked to stop. If you don't you'll be asked to leave and if you don't leave when asked to do so by security you're subject to arrest for trespassing. It's a very rare circumstance, we don't want to happen today so let's all be respectful of the fact that we're a community and we may approach the same issue from different perspectives and have different viewpoints. So with that, Karla, could you please read today's item.

Item 177.

Wheeler: Thank you. First off today, the city attorney will be making some procedural announcements describing today's hearing.

Linly Rees, Chief Deputy City Attorney: Thank you, mayor. Today is an evidentiary hearing. This means you may submit new evidence to council in support of your arguments. We're going to talk about the order of testimony today. We begin with staff report by the bureau development services staff for approximately ten minutes following the staff report city council will hear from interested persons in the following order. The appellant will go first and has ten minutes to present their case. Following the appellant persons who support the appeal go next each will have three minutes to speak to council. After that the principal opponent in this case the applicant has 15 minutes to address city council and rebut appellant's presentation. After the principal opponent council will hear from persons who opposed appeal and each will have three minutes. Finally the appellant will have five minutes to rebut the presentation opponents to the appeal. Council may close the hearing, deliberate and take a vote on the appeal. If the vote is a tentative vote the council will set a future date for adoption of findings and a final vote on the appeal. If council takes a final vote today that concludes the matter before council there are several guidelines for those testifying before council today. First, any letters or documents you wish to become part of the record must be given to council clerk, Karla, on that side of

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chambers, after you testify. Similarly originals or copies of slides, photos, drawings, maps, videos or other items you show to council during your testimony including any power point presentations must be given to council clerk to make sure they become part of the record. Second testimony must be directed to the approval criteria. Any testimony, arguments and evidence you present must be directed to the applicable approval criteria for land use review or other criteria in the city's comprehensive plan or zoning code you believe apply to the decision. Bds staff will apply the applicable criteria as part of their staff report to coin. Third, you must raise an issue clearly enough to give council and other parties an opportunity to respond to the issue. If you do no raise issues with enough specificity you will be precluded from appealing to the land use board of appeals on that issue. Finally applicant must identify constitutional challenges to conditions of approval. If the applicant fails to raise constitutional or other issues relating to proposed conditions of approval with enough specificity to allow council to respond applicant will be precluded from bringing an action for damages in circuit court. That concludes my remarks.

Wheeler: Very good. Do any members of council wish to declare a conflict of interest?

Fish: I don't have a conflict of interest or ex parte conversations to disclose but as is our custom, both proponents and opponents of the appeal have met with members of my staff.

Wheeler: Very good. Does any member of the public wish to ask commissioner Fish about those contacts? Does any other member of the city council wish to declare a conflict of interest? No other member of the council has declared a conflict of interest. Do any members of the council have ex parte contacts to declare or information gathered outside of this hearing to disclose other than what commissioner Fish has just indicated? I would like to say I have seen a number of newspaper articles and news stories on this subject. Does anyone wish to ask me any questions about that? Seeing none, any other commissioners have any ex parte contacts to declare, information gathered outside this hearing they would like to disclose?

Eudaly: My office has received written testimony and I at least one member of my staff has met with individuals involved but nothing to declare.

Wheeler: Very good. Anyone in the chamber have questions for commissioner Eudaly based on the information she has just provided?

Rees: Mayor, could we have the two members of council whose staff had met with some of the parties specify whether or not their staff conveyed that information to them or did not, please.

Eudaly: They did not convey any information.

Fish: That's a good question. What I get in advance of all land use hearings is a memo from staff laying out the issues and in some instances it contains recommendations from staff or issues to be highlighted, but it generally doesn't contain any ex parte information. It's the staff view. It's almost like a memorandum from a law clerk in a judicial proceeding. That is what I get generally in these proceedings.

Wheeler: Does anyone have any questions of commissioner Fish on this matter? Seeing none, have any members of the council made any visits to the site involved in this matter? I'm certainly familiar with the site. I run by it periodically.

Fish: I'm familiar with the site. I haven't done any particular inspection.

Wheeler: I'll take you with me next time. Very good. Does any member of the public wish to ask any questions with regard to disclosed visits to the site? Seeing none, do council members have any other matters that need to be discussed before we begin the hearing? Commissioner Saltzman, I assume we're good to go for you?

Saltzman: Yes.

Wheeler: Let's start with the staff report, approximately ten minutes. Good afternoon, name for the record. We don't need people's addresses.

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Ben Nielsen, Bureau of Development Services: Good afternoon, mayor, commissioners. I'm Ben Nielsen, senior planner with Bureau of Development Services. I'll be providing basic context for the Fremont's proposal in summarizing the final findings and decision of the commission. There's a long list of appeal issues to address so, I may need an extra three to four minutes.

Wheeler: Just for the record, the staff report is an approximate time. So you take the time you think you need to lay out the issue for the council.

Nielsen: I appreciate that. Thank you. First the zoning context. The site is located in the North Pearl sub area of the River District sub district of the larger Central City Plan District. The site is zoned EXDg, which is short for central employment with design and greenway overlays. The site has a base floor area ratio or FAR of two to one maximum. Additional FAR up to 3-1 may be earned through bonuses, transfers from historic resources or from transfers in a central city master plan. Three types of bonus were earned on this site: the residential bonus, the locker room bonus, and the eco-roof bonus. Together equaling 2.72-1 of bonus FAR. Total proposed FAR on the site equals 4.26-1 leaving some bonus FAR unused. The site has a base height limit of 100 feet. 75 additional feet may be allowed through modification to the North Pearl sub area height opportunity area standards. Areas where this is allowed are shown in green cross hatching on the map. Floors above 100 feet in height have limits on their floor plate size. The height of this proposal tops out at 175 feet at the top of the parapet with an additional ten feet granted through modification to the base zone standard for rooftop mechanical screen. More on this later. This land use review consists of three parts each with its own approval criteria. For the design review component the approval criteria are the central city fundamental design guidelines and the River District design guidelines. These two documents are separate from the zoning code. For requested modification through design review, the approval criteria are found in zoning code section 33.825.040. For the greenway review component the approval criteria are found in zoning code section 33.440.350, and the separate Willamette greenway design guidelines. The site is located along Northwest Naito Parkway adjacent to the Willamette River and at the end of an existing segment of the greenway trail. The Fremont bridge lies to the northwest. The site is 72,080 square feet in area and is essentially flat. It's currently developed as surface parking lot for the adjacent three-story office building and here's a bird's eye view of the site. The green line on the image shows the extent of the greenway trail in this area. The proposal can be summarized as a 17-story residential mixed use building with approximately 6600 square feet of retail space on the ground floor and 275 residential units above. 152 parking spaces are proposed in a garage on a portion of the ground floor and in the basement. The proposal also includes a 60 foot wide pedestrian plaza on the north side and reconstructs the greenway trail on this site. The design commission ultimately voted 3-1 to approve this land use review. The appellant sites 13 design guidelines not being met. Challenges six of the seven modification requests, and challenges interpretations of four sections of the zoning code. I'll briefly touch on each point with responses from the design commission's final findings and decision. Guidelines a2, a3, a3-1, a5-1-1, a5-1-5, a5-3, a5-4 and c-4 speak to the proposal's response to its context. The design commission found that the proposal supports the River and Greenway trail, has a massing concept that takes the view of the Fremont bridge into account, incorporates a similar scale and massing in its building as other development in the North Pearl and incorporates balconies, large areas of glazing, active ground floor spaces and large plaza which reflect the North Pearl context in orient towards the river. Guidelines a4 and b5 speak to the proposal's response to the pedestrian environment. The design commission found that these guidelines are met with a series of storefront windows along the building's three public frontages, balconies, decks, roof terraces and windows which

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orient to the river and the plaza, and the restaurant space which helps activate both. Guideline c5, design for coherency. The proposal meets this guideline by setting consistent rule for articulation and fenestration of the building's distinct masses with a well integrated material palette. From the Willamette river design guidelines, the design commission found the proposal meets these guidelines by approximating the city's 200 foot block pattern providing attractive ground floor uses along the greenway -- excuse me active ground floor uses along the greenway, providing large areas of glazing and open balconies overlooking the greenway and connecting the greenway trail to northwest naito parkway through the proposed plaza. Regarding requested modifications to development standards the appellant states it was not mandatory for the design commission to approve any of the requested modifications and they should have been reviewed through adjustment process. In addition to providing approval criteria for modification requests, the zoning code also gives authority to the design commission to consider modifications of site related development standards as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. However, modifications that are denied may be requested as an adjustment through the adjustment process. Moving into the modifications, modification number 1 addresses height and seeks to allow rooftop mechanical equipment and screening which extend above the height limit of 175 feet to be located closer than 15 feet to the roof edges on the street facing facade and to allow them to cover 73% of the tower roof area which is greater than 10% allowed by this code section. The design commission found that this mechanical screen is well integrated to the tower massing and that the purpose of the standard, which controls over all bulk and intensity of development, is met on balance with the small portion of the building footprint affected compared to the total building. Modification number 2 addresses standards for bicycle racks and seeks to allow long term bicycle parking racks hung on walls in the bike storage room to be spaced at 1.4 inches by six feet rather than the required two feet by six feet. The commission found the narrower spacing allows more room for active uses on the ground floor, better meeting several guidelines and they found the purpose of the standard which is intended to ensure that bikes can be locked without undue inconvenience and a reasonably safeguarded from damage is met with a condition of approval requiring a minimum six inch vertical stagger between racks. Modification number 3 addresses the north pearl sub area height opportunity area standards and seeks to allow the height of the building to be 175 feet exceeding the base height of 100 feet and to allow the length of building facade above 100 feet in height to exceed 120 feet in length. The design commission found shifting building program in mass from podium to tower and allowing tower dimensions to exceed 120 feet in length allows for more of the Fremont bridge to be visible than a building built up to 100 feet base height better meeting guideline a2, and allows additional light and air to penetrate to the greenway and river over parts of the lower -- over lower parts of the building.

Wheeler: Could you help me understand, by the way, for everybody regardless of where you are on this questions stop the clock, so don't feel like it takes from your time. So what does the orange box represent in this diagram?

Nielsen: The orange box in this diagram represents a building mass built up to the 100 foot base height

Wheeler: Is that allowed under the base zoning?

Nielsen: That's allowed under chapter 33.510 central city plan, yes. That would be considered the base zone height for the central city in this area.

Wheeler: Got it and so what you were just saying then was they were allowed to build up higher as a result of bringing the base in closer. Is that a fair interpretation?

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Nielson: Correct, yes. The commission found if they were able to lower the podium massing which is the I don't think I have a thing to point out here, but it's the lower stories of the building that extend out on either side.

Wheeler: I see.

Nielson: They could get more view of the Fremont bridge and this is taken from the fields park.

Wheeler: I see. Thank you.

Nielson: Regarding the purpose of the standard, which is lengthy, the design commission found that it's also met. The purpose includes goals of increasing visual permeability, preserving visual and physical access to the river, allowing for light and air to penetrate to the public realm and ensuring that bonus height does not significantly affect use of the Fremont bridge. The commission also found that these moves balance the purpose to develop a dense active urban waterfront. While at the same time retaining the iconic stature of the Fremont bridge and skyline to better meet that purpose statement the commission imposed a condition of approval requiring retail space on the ground floor to remain in retail sales and service for the life of the building. Modification number four addresses the required open area development standards shadow standard and seeks to allow up to 84% of the required plaza to be in shade at noon on April 21 of any year. The standard requires that no more than 50% of the plaza be in shade at that time, the design commission found that the proposed plaza width and location on the north side of the site, between the existing office building and the proposed building approximate a standard right of way in the pearl district and reflects the emerging development pattern in the north pearl waterfront area. They also found that this allows for preservation of views to the river from northwest naito parkway and portioning of the north pearl such as the future intersection of northwest 12th and Raleigh. The design commission found that the purpose of the standard which is intended to allow for adequate amounts of light and air in addition to providing recreational opportunities and options for pedestrian circulation was met on balance as the plaza would only be 26.5% covered in shade by 1p.m. on April 2. Sorry I should've advanced my slide there. Modification number five addresses two of the north pearl sub area waterfront development standards, the first part of the modification addresses the setbacks for all development from the Willamette river standard and seeks to allow portions of the building over 35 feet in height to extend into the setback areas as shown on the diagram in red. For this standard the commission found that better views of the Fremont bridge are provided by shifting massing to the tower and allowing it to extend into the setback. They also found subsequent lower podium heights allow for larger areas of planted rooftop closer to the greenway trail.

Wheeler: Before you move off of that, because I know this is a point of contention, so I want to make sure I understand it, so the building clearly is in the greenway setback and you're saying that there are exceptions made to the setback rule that have to do with the view of the Fremont bridge could you explain that.

Nielson: Absolutely, so the diagonal line is the setback in question here. There are two greenway setbacks and we're talking about the diagonal line.

Wheeler: Got it.

Nielson: This is related to one of the other modifications to height allowing the building to go up to 175 feet. That moving some of the massing from the podium which is the lower portion of the building --

Wheeler: That was the orange box in your previous --

Nielson: Right. That would extend up significantly higher, the 100 feet.

Wheeler: It's at the discretion in this case of design review if they.

Nielson: Project into that.

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Wheeler: Take less of the massing from the base and put it into the height they have that discretion to cross into the diagonal greenway setback.

Nielsen: Correct. Yes. Through modification.

Wheeler: Through modification, thank you.

Fish: On a couple of occasions you've mentioned better views of the Fremont bridge. From the code perspective, what is the what is the zone that's encompassed that has a view of the Fremont bridge and how do we determine whose view we're talking about?

Nielsen: In general when I'm talking about views of the Fremont bridge I'm talking about views from the fields park which is really one of the primary places you can see it in a public setting. That's basically what the design commission focused their findings on as well. No one was taking into account any private views, only public views. I might add this is not a protected view so we're just working within the guidelines within the context of the design guidelines approval criteria to preserve some of that view.

Fish: So I had a little something to do with the fields park, so lets assume this building was coming to us before the fields park was built. What would then be the prospective we'd be concerned about?

Nielsen: I think we'd have a lot more difficult time looking at views of the bridge as being an incumbrancer on this project. We'd probably be taking a look at views only from rights of ways such as northwest 12th avenue or northwest 13th avenue which I don't believe are blocked by this building.

Fish: Thank you.

Wheeler: Commissioner Eudaly.

Eudaly: It appears that the property north adjacent on the northside has the same zoning.

Nielsen: Correct.

Eudaly: How about to the south?

Nielsen: It also has the same zoning.

Eudaly: Ok, so when and if those lots are developed we're going to be looking at similar height allowances?

Nielsen: Correct.

Eudaly: Ok, thank you.

Nielsen: Continuing onto the second part of the modification to this standard, the maximum building dimensions standard. To allow the building dimension perpendicular to the river to be 230 feet nine inches in length, exceeding the maximum dimension allowed 200 feet. For this standard the design commission found that allowing the building to be longer perpendicular to the river results in a narrower building parallel to it better meeting guidelines that aim for better connections visual and physical to the river and green way trail. For both standards commission found that the purpose statement which states simply "that the standards are intended to assure both frequent views of the river and physical connections to the river and its activities are not negated by a modification to either standard. Last modification, modification number seven addresses parking area setbacks and seeks to allow a required landscape setback between the south lot line and the driveway to be two feet wide and screened with a three foot tall concrete wall for a portion of its length with three foot tall evergreen shrubs for the remainder instead of the required five foot setback planted with threes and shrubs. The design commission found that allowing the setback area to be reduced in width allows for a larger area of the ground floor around northwest Naito to be programed with either active ground floor uses within the building or devoted to pedestrian oriented open space. They found that the purpose of the standard which is intended to create an environment that is inviting to pedestrians and transit users is met with the urban frontage along northwest Naito parkway. Regarding the appellants final three challenges to.

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Wheeler: Can you go back to that please. Does that mean that, that space is required to remain an open space?

Nielsen: So we're just looking at the, it's probably hard to see on the screen, but it's a blue dotted area on the right side of the drawing.

Wheeler: Right I see it.

Nielsen: That's required technically to have a five foot setback with plantings in it including trees. And --

Wheeler: Right, you're saying the exception is being given for the smaller set of trees --

Nielsen: Yes.

Wheeler: Because it creates more of an open space. Is that a public open space or private open space?

Nielsen: That's referring to the plaza so that's a public plaza on the left side of this diagram.

Wheeler: Got it.

Nielsen: Regarding the appellant's final three challenges to interpretations of the zoning code staff has submitted information about those interpretations to council staff and contends the code has been interpreted and applied fairly and accurately. I can of course go into more detail if desired. The alternative space in council today deny the appeal and uphold the design commission's decision to approve the land use review. Deny the appeal and uphold the design commission's decision to approve with additional conditions of approval and/or design revisions, grant the appeal and overturn the design commission's decision to approve therefore denying the appeal. That concludes my presentation.

Wheeler: Very good. Thank you. Any questions. Next up is the appellant, ten minutes, and I realize this is a complex issue, so unless legal counsel overrides me, if you need more time the way we have historically handled this is we would document that additional time over ten minutes and give the principal opponent that same additional time. Is that -- that's good? Okay, great. So start with your ten minutes and let's see how you do. Good afternoon.

Jeff Kleinman: Thank you, mayor, members of the council. My name is Jeff Kleinman, I'm the attorney for the pearl district neighborhood association we're going to try to keep it within the ten which means I have to move quickly since the folks to my right have architectural and planning expertise vis-a-vis the criteria here and I'll introduce them and they will do the lion's share here. Basically we're talking about is a project that might work elsewhere on a city block at some remove from the river but not in its position on front avenue adjacent to the river and the greenway. The height, the massing, the form and other features of the proposal are inappropriate to the site and can't be approved under the approval criteria we have addressed in the appeal document. Now it might be that there would be an argument to be made if this project were able to argue that we are providing affordable units and we have to have this height and massing to get close to the greenway to jam those affordable units in but that's not the case. This application came in under the wire and there are no affordable units proposed. The application depends upon several modifications none of which can be justified under the standard for those modifications and it also depends upon a stacking not just of the modifications to the standards but also of two totally inappropriate precedents, the waterfront pearl and on the other side of the Fremont bridge the Bridgetown lofts, which are far, far more respectful of the site of the river and of the approval standards and I was very familiar with the waterfront pearl not so much with the Bridgetown lofts. I suggest taking a walk on the greenway up that way and seeing how respectful that development is and how little precedent it provides for this project. This project does set if approved a very dangerous precedent for riverfront development in this area which will wipe out the Fremont bridge. There will be no further

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argument against such development if this is approved. So for the benefit of council and not to take too much time we have prepared draft findings of allowance of the appeal and denial of the application. I have given those to the clerk at the commencement of the hearing and there are copies for council and copies also for the city attorney. So with that, let me introduce first Peter Gramlich, who has an architectural background and George Galster will speak and he's a distinguished professor of planning.

Peter Gramlich: Thank you, Jeffrey. Greetings, Mr. Mayor, city commissioners. Thank you for the chance to lend my voice to the discussion. I'm the tieless one at the moment between the attorney and the urban planner. I also own Gramlich Design and Planning in Portland. My degrees are in architecture and I'm a lead accredited professional. I've worked for big firms in Boston and in Germany and I've helped design projects in the U.S., Europe, the Middle East and Asia including high-rises. I teach architecture at PCC Sylvania where my students learn about building design and construction and are part of the next generation of people who will help shape the Portland of the future. As we emphasize in class architecture is inseparable from proper planning both are at issue here. I have tried to evaluate this Fremont place proposal as one that my students might submit for studio review. If they did, it would not likely get past schematic. In other words we would say back to the drawing board and why? Because this proposal violates the most basic principle of design, first do no harm to your surroundings. The city has both mandatory and discretionary criteria to prevent such harms from taking place and in this case as outlined in the appeal statement filed by the association the project as proposed violates most of these criteria. Speaking from my expertise and experience and taking all of the approval criteria into account I would simply note the following four points. One, the project has an inappropriate massing concept, one which does not respect Portland's blocked pattern and does not reflect the identity of the Pearl District neighborhood, it detracts from the neighborhood by sealing it off from the river and setting a precedent for more of the same in the future at its core it is not part of the neighborhood, it is a barrier. Two, it detracts from the character of the waterfront area rather than reinforcing it, it seals the Willamette River Greenway off from the neighborhood and the public as a whole effectively ceasing it for private benefit. Three, the proposal does not in any way compliment the context of existing buildings, it instead establishes a dangerous new context, a precedent for over scaled massing and for walling off this stretch of the Willamette in its entirety. And finally four, the proposed design itself lacks a clear vision or even unifying elements, it tends to present itself as a contorted Rubik's cube, twisting and convoluting itself in an attempt to maximize out floor area. As you take these failings into account bare in mind that code also requires each of the requested modifications to the city's standards to "better meet design review requirements" in other words the modifications must benefit the design itself, not just the applicant's pocket book, here they do not. You should send this project back to the drawing board for a design that meets the city's requirements, thank you for your considerations and I'll pass it on to George.

Fish: Just ask you one question. In light of the likelihood there's going to be additional development along that stretch of the river, what standard would you have us apply in terms of the context because -- I'm somewhat reluctant to embrace a standard that says we have to be bound by a context that is likely within a number of years to change and it's a context that's a residue of a different set of uses along the river. What is the appropriate standard where we know there's going to be redevelopment?

Gramlich: Sure that's a valid point of course, we can't just say the only context we're responding to is that which existed from 1960 at low slung industrial buildings, right? But context is a sensitive, delicate, important matter and I think it lies at the core of everything we're talking about here. I suppose another way to think about it is precedent. What kind of

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precedent do we want to be setting with the public and private faces that we're presenting our citizens, our greenways, our natural areas, our parks, our views. It's hard to lecture as to what context should be. I just am wary about the precedent that we're setting if we build something of this scale and size.

George Galster: Good afternoon. There are three major reasons for sustaining the appeal of the pdna. The design commission incorrectly applied design guidelines and Portland zoning regulations.

Wheeler: I'm sorry to interrupt. You have to say your name for the record. Sorry about that.

Galster: Sorry, George galster.

Wheeler: Thanks.

Galster: First of all it approved building modifications that degrade design review requirements. It set a dangerous precedent for the long term development of the river district and it accepted the developer's miscalculation of site area for purposes of determining allowable building mass. As Mr. Nielsen pointed out these are the applicable guidelines that the design commission must take into consideration. If you look at these guidelines and all these documents they are quite consistent in their desire to enhance Portland's personality and they give specific ways in which our building is supposed to enhance our portonality by emphasizing Portland themes, integrating the river into the community, supporting parks and public spaces, enhancing and protecting views and reinforcing special districts. Let's not take these in generality, lets see specifically what the guidelines say with regard to each of these five points. Emphasizing Portland themes, quote "there are many themes unique to Portland's culture and geography that promote the identity and image. Examples of elements that identify Portland include roses and bridges. Integrating the river into the community. The Willamette river is a center city's most significant geographic feature, the bridges that cross the river reinforce the river's role as the binding element of the center city. Supporting park and public spaces. The Tanner creek parks, that is Jameson square Tanner springs park and fields park function as both a neighborhood park system and as one of Portland's primary promenades extending the north park blocks north to the Willamette river. Thus we aim to strengthen and enhance the tanner creek parks". Enhancing and protecting views, "taking advantage of surrounding view opportunities increases the desirability of living, visiting and working in the center city thus we aim to size and place new buildings to protect existing views". Reinforcing special districts. Design should acknowledge the context of its surroundings with an approach that responds to the character and identity of three blocks in every direction. Let's keep these in mind as we look at the decisions the design commission made. First of all, they approved building modifications that degrade these design review requirements. The zoning code clearly allows only modifications that both will better meet the applicable design standards and be consistent with the purposes of the standards in question. The purposes of the standards in question are clearly spelled out in the zoning code. Some of these were nicely reviewed by Mr. Nielsen. "Increase access to sunlight along the greenway, facilitate visual and physical access to and along the riverfront, create expanded opportunities for views of the river as viewed from locations west of the riverfront" and last but hardly least "ensure that bonus height granted to sites adjacent to the Fremont bridge do not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature in the Portland skyline". The design commission essentially approved modifications that allow the Fremont apartments to be taller and fatter than are permitted by code. Does this supersize building better meet and be more consistent with the purposes of the design standard? I think the answer is obvious. Point two, the design commission set dangerous precedents for the long term development of the river district.

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Future developers will expect that they too will be allowed to build as massively as the Fremont apartments. Consider what this will mean for our future. It will convert this current picture to this picture if we permit the Fremont apartments as currently proposed. The developer immediately to the south will be able to build that. The developer of centennial mills will be able to build that. And I ask again, would this enhance Portland's personality? Would this emphasize Portland themes? No. It minimizes the bridge and the river. Would this integrate the river into the community? No, it walls the river off from the community. Would this support public parks and public spaces? No. It degrades the value of fields park, it degrades the value of our greenway. Does it enhance and protect views? Here notice the doublespeak the developer is trying to get you to believe. We enhance the view by only obscuring half of bridge instead of all of it. And last does this reinforce special districts? No. Quite the contrary. This development will set in motion a long-term development pattern that will be the poison pill for the pearl. Third, the design commission accepted the developer's miscalculation of the site area for purposes of determining allowable building mass. The zoning code is clear all measurements involving development standards are based on property lines and area of the site after dedication of public rights of way. The developer did not do this and as a result, they exaggerated their buildable site by 70%. We wouldn't be having this discussion if the basics of planning were followed correctly in this case. To conclude, the case of the Fremont apartments represents a crucial decision point for Portland. Will we hold fast to our duly adopted plans for a humane, livable, distinctive city or will we build at all costs including violating our own zoning codes? The design commission has opted for the former. The latter, excuse me. We hope you'll opt for the former because this is simply the wrong building for a special site. Thank you.

Wheeler: Thank you. Colleagues, any questions before we, commissioner Fish.

Fish: One question, mayor. Mr. Kleinman, I think at the beginning of your presentation you mentioned in passing that this building would not be subject to our affordable housing requirements under inclusionary housing. I'm glad you mentioned that because over 15,000 units were filed ahead of the deadline, so with all due respect to some of the critics of this policy, we're not going to really know whether inclusionary housing has had any potential positive or negative impact until the 15 to 20,000 units in the pipeline are built. That are not subject to inclusionary housing. It seemed to be -- there were highly motivated developers that beat the deadline so we have three years of product in the pipeline and it seems like its going to make it extremely difficult to gauge the effectiveness of inclusionary housing with all this development that's not covered. Lets just take inclusionary housing as a concept. Had this building been subject to that requirement and so if there were more affordable units in this building would that change your analysis at all in terms of public benefit?

Kleinman: I'm not sure it would change my analysis very much but I think it might change the council's analysis a little bit because there would be a further argument of additional public benefit for this humongous massing and overshadowing of the greenway, which is quite unparalleled. So again, as an advocate for my client I have to say it might not affect my arguments, but it might affect the council's perspective.

Fish: That's helpful. Thank you.

Saltzman: I have a question, mayor.

Wheeler: Commissioner Saltzman.

Saltzman: I was intrigued by the statement the developer has exaggerated the site area by 70%. Can somebody elaborate what they mean by exaggerated?

Kleinman: I can, commissioner Saltzman. This is Jeff Kleinman again. We set this out to some extent in the appeal narrative that we filed and it's set out in a bit more detail in the

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proposed findings sustaining at appeal that we have circulated, but it's also something that's going to be the subject of some detailed testimony going forward. There's a very organized presentation coming up to -- but in a nutshell on that point, there are several portions of the site that have been included in the square footage for development purposes which do not belong in the calculation and they are very significant. One is that the applicant measures the site down into the Willamette, down to the ordinary low water line when in fact by state law, which is set out in the findings we wrote, the state and the people of Oregon own up to the ordinary high water line, and we're not sure what that distance is that's been included but it's a lot and it's got to go. This application isn't sustainable as it is. Then the other component of that to answer briefly is for all practical purposes, the greenway area itself, the greenway trail and path, and the 60 foot strip on the north that's a public walkway to the river, are essentially dedicated whether as public or private rights of way and as such by city code and we cite the code in what we have submitted, they are not to be included in the developable area for the purpose of calculating far, so you wind up with a much, much lower permissible far. By my calculation for what it's worth, at most 40,000 square feet is the developable area and not something closer to 80,000 square feet as characterized in the application. Hope that answers.

Saltzman: Thank you. Yes.

Wheeler: Very good. Thank you.

Kleinman: Thanks again, mayor, councilors.

Wheeler: Next up we have the principal opponent. You get 15 minutes, but the appellant went two minutes and four seconds over so if you want you have 17 minutes and four seconds. I'm sorry. I'm out of order. Sorry. Thank you. Supporters of the appeal. Karla, when you have the suspicion you're usually right so shout it out. How many do we have?

Moore-Love: 36.

Wheeler: Okay here's my usual speech. [laughter] quantity is not as important as quality and if people feel like you're hearing other people already make your comments absolutely feel free to either just thumbs up or if you want to come up and stand behind somebody, appoint somebody from your group if you will and you may go stand behind them and be recognized or alternatively come to the mike and say everything that I have wanted to say has been said in my opinion is x, so that you have registered your opinion for the record but you do not necessarily feel you need to repeat the same arguments 36 times if that is the case. First three, please.

Wheeler: Again just name for the record, please. We don't need people's addresses Stan do you want to kick us off please.

Stan Penkin: Good afternoon. I'm stan penkin, president of the pearl district neighborhood association. My testimony is going to be more at a 30,000 foot level rather than getting into the nitty-gritty. You have just heard compelling expert testimony on why the proposed Fremont apartments is the wrong project in the wrong place. With this appeal approved by a significant majority of our board, is about far more than a building. It's about who we are, where we're going, our vision and what we are leaving to our children, grandchildren, and generations beyond. Portland has been a model for visionary thinking, smart urban growth and innovative planning having worked with the planning bureau as a member of the Portland plan and comprehensive plan, community involvement committee for seven years, I have seen firsthand the passion and dedication of our planners in developing policies that work to the betterment of our city for everyone. It's not just about buildings. It's about considering every aspect of our daily lives. From where we live, where we work, where we play, where we walk, where we bike, where we drive. We interact as a community and how that works in harmony. It's about livability, sense of place and connection to our rivers and mountains that are all ingredients that make us such an

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amazing city. The Fremont apartments as currently designed is a contradiction of those values, our aspirations, and established policies that make people want to be here in the first place. The pearl district does not oppose development. The neighborhood has been a mecca for smart development, guided by visionary planning that takes into account all the values just mentioned. We are a vibrant and diverse community because of that, but after hearing our community's concern in a public process we do oppose misplaced development that will harm and detract from the character, spirit and soul of this unique neighborhood. Not to mention the river that belongs to all of Portland. As you heard, the design commission's approval of this project was a close 3-1 vote with the minority opinion representing much of what we are speaking of today. That opinion was by the commission's chair Julie Livingston, who I believe is here today. As there does not appear to be a process in the current appeal format whereby a minority opinion is heard in the spirit of city council's recent resolution that all voices be heard I'm asking that Julie be invited to express her opinion for your consideration. We are in the throws of enormous growth where rampant development has outpaced our ability to control it. While we await approval of central city 2035. Please do not allow this massive misguided project to go forward as a contradiction to all that we value and cherish. Thank you.

Wheeler: Thank you. I don't like to be the microphone, so when you see 30 seconds, that's when the yellow light comes on. Please stop when you hit the red. Thanks. Good afternoon.

John Wilkinson: Thanks. Ladies and gentlemen, Mr. Mayor, greetings from the tourist section across the lobby over there. I won't go try to go into the detailed technical aspects of these things. That's been well covered already, but my comments to you are community reasons for denying this project. It involves what we want Portland to be going forward. The waterfront of the Willamette has been in the entire history of the city for various reasons that have changed over time. It's still very important to the city and the people that live here now. Parks, Portland has a national and international reputation with regard to city parks and that needs to be reinforced, not torn down. And the Fremont bridge of course it was put in place at great community input and great expense. It's now an icon. It's shown in most pictures that relate to the city, promotional materials and the like as you well know. Just a note on the fields park, you probably know this already, I hope that you do, but it's quickly become a very heavily used park. People walk there daily from several blocks away in all three directions to get to the park the dog leash off area has a lot to do with that. Just as I left the community a couple hours ago now, I counted 23 people in the park on a snow day, 12 dogs, and the people that take care of them, and often we look on the park we'll see as many as 20 dogs or more in there at one time. It's quite a thing and that's going to get only more overused and undersized as regards all these additional units come on stream. There must be a thousand within walking distance coming up that are yet unoccupied. So seems to me that we have here what is a greedy san Francisco landowner who is trying by all means and certain amount of pulling the wool to maximize the amount of living units that can be shoehorned into that tight space and I would just ask the landowner, developers, if this were san Francisco, the hometown of the owner, and you were proposing this building to be between the marina park and the golden gate bridge, how do you think it might be dealt with?

Wheeler: Thank you, sir. Good afternoon.

Kurt Sorensen: Good afternoon. My name is Kurt Sorensen, I'm a resident of the pearl district. We bought here after researching the various land use plans for this district. The proposed Fremont apartments will destroy that good planning framework. I oppose the proposal for the reasons set forth in detail in my filed testimony. The consistent theme of the plans since the central plan of 1987 require that building height and bulk be scaled

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down from the west as the river is approached. In the north pearl waterfront, that means stepping down height from the west part of the pearl district. The primary zoning tool used to accomplish this is a far of 2-1 as opposed to the 4-1 or 5-1 ratios applied in the pearl district west of naito. This is augmented by other provisions such as height restrictions, facade restrictions, open space and view corridor restrictions, code provisions to impose a Portland block pattern for lot size and the greenway overlay. The block pattern sections are important along the river because there are no streets to create the normal grid pattern. The problem with relying on far is the base must be defined so the base floor area can be determined. If it is not then far loses its regulatory and predictive value. See the graphs at page 4 of my testimony. The ordinary application of far in the central city is to a standard block of 40,000 square feet. The entire area of the block is thus buildable. That works well but as discussed at pages 2 and 3 the scheme collapses on unusual lots such as those along the river. The code defines far in the traditional way. It's ambiguous in defining site. Reliance on unpublished custom or habit fails if there are no constraints. The unintended consequences of building that is at odds with zoning and plans compare Fremont to waterfront pearl where size was limited by sound zoning constraints. My written testimony illustrates the cumulative effect of an exaggerated base floor area when bonuses are applied. If the goals of the plan in the code are to be met the building restrictions must be treated the same as the rights of way in the downtown blocks. Waterfront pearl conforms to the block grid pattern. Fremont apartments does not. Concluding, the approach used for Fremont apartments will completely subvert all existing plans. The use of far is restrictive and predictive will be lost. Allowing this building would be like cramming a whale into a bathtub and would provide a negative precedent for the remaining parcels along the river. It would predict a high wall against the river separating the river from the rest of the community. In the downtown pearl the proposed building would fit. On a standard block it would have a perfectly acceptable far of 7.68-1. That's not true here.

Wheeler: Thank you, sir. Thank all three of you. Next three, please. Good afternoon.

Alan Potts: Good afternoon. Thank you. My name is Alan Potts I'm a pearl district resident and I live at 949 northwest Overton street. I agree with the opinion of the chair of the design commissioner and her dissent when she concluded that Fremont apartment proposal negatively impacts the Willamette greenway and its use by all Portlanders and visitors who enjoy the waterfront. In order to expand the size of the Fremont apartments the developer sought a modification that would allow it to exceed the maximum 200 foot depth set out in the code. This modification means that a five story building will directly abut the 25 foot Willamette greenway. While the greenway is the bare minimum of 25 feet path along the greenway, that greenway is much smaller sometimes and as narrow as 13 feet. On the south waterfront planners had the foresight to preserve the greenway park like setting for hundreds of feet from tall construction so those enjoying the waterfront would not be overwhelmed by looming buildings. We have the direct opposite with the Fremont apartments proposal. It would literally cast a shadow over the walkway during summer hours. I understand that the size of this parcel cannot support a dedication of 100 feet or more of the width devoted to the Willamette greenway. That is why every foot given over to development is so important. The developer received a modification allowing it to add 30.9 feet of depth to the building. That is 30.9 feet that would have been devoted to making the Willamette greenway a more viable public space. This modification does nothing to enhance the waterfront. In fact it does the opposite. The actual 13 foot width of the path in some places will make it dangerous for cyclists and pedestrians walking in tandem to pass one another without risk of a collision. In addition the new central city code will require a 50 foot setback meaning the Fremont apartment project will extend 25 feet further towards the

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Willamette river than all the new construction in that segment of the naito parkway including centennial mills. Thus it will continue to be a bottleneck and stick out like a sore thumb. The Fremont apartment proposal should be rejected. I thank you for your attention.

Wheeler: Thank you. Good afternoon.

Christina del Rosario: Good afternoon, everyone. My name is Christina del Rosario, I'm a retired nurse. We moved to Portland two and a half years ago after deciding to retire. The parks, trees, access to transportation, walkability, bike lanes and a sense of community Portland won our hearts. It has everything to offer to every age group from infants to seniors, and I'm sure this did not happen without the mindful planning of the builders, investors and citizens of the community and I'm here today to continue to support that legacy. The city's changing at the very fast pace and as a foot patrol volunteer I have seen ugly consequences but I'm not here to talk about it right now. I'm here today to make sure we continue to work together with the builders, investors and the citizens of this community to make sure we do not compromise the identity which makes Portland the model for other cities. Let's keep it its uniqueness, beauty, trees, parks, access to transportation, walkability, bike lanes and the trails along the Willamette river so we can continue to enjoy and the future generation of the beauty and uniqueness of our city we call home. Thank you very much for your attention.

Wheeler: Thank you. Good afternoon.

Marc Lindau: Thank you. My name is mark Lindau I have been a physician, I was first in 1976. During this period of time I felt that this was a very quirky type of little town. For example, with the founding fathers there were two different grids, one was going north direct north, the other was going in the direction of the star, the north star. It's just different. During the period of time that these fathers went they visited Europe. During that period of time they found that there was an amazing park that was going through the cities. As a result, we now have a parking that went from the psu all the way into northwest, but unfortunately, one of the founders had died and he did not have a will because of that now we have four blocks of buildings that is interrupted by the complete park. When I arrived here, I was amazed by the absolute amazement of the tunnel that went into 26 and into downtown. The mount hood went framing for that absolute place. In 1992, the koin building was there. Now we get to see the beautiful koin-- the mount instead of the mountain. Gentlemen, that's all I have to say. You've got a clunker.

Wheeler: Thank you. Thanks all three of you. Next three, please.

Wheeler: Good afternoon.

*****: How you doing? You want to go first?

Bruce Kaplan: Sure. My name is Bruce Kaplan I have been a resident in the pearl district for the last ten years. Portland is a vibrant community and a spectacular location. While we have been blessed with that geography our livability has been enhanced by the visionary leadership of our city government. When we brag about Portland to others we often talk about the city having the courage to choose waterfront park over harbor drive. The foresight to protect forest park from residential development and the smarts to convert old warehouses into the pearl district. A model for cities around the world. We have reached another one of those crossroads. Does the city serve the public better by creating yet another high-rise luxury apartments or do we decide it's better to prevent the walling off of our waterfront? In 2009 the project for public spaces created a blueprint for cities that envisioned their waterfronts as destinations to keep people coming back. The project calls its recommendations rules of thumb drawn from 32 years of experience working to improve urban waterfronts around the world. The project goes on to 13 recommendations. I'll mention a few. The first is make public goals the primary objective. When the city considers its waterfront to be a public asset it's easier to put public goals ahead of financial

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expediency. Another rule. Optimize public access. The accessibility of the waterfront is crucial. Waterfronts with continuous access are much more desirable than ones where public space is interrupted. Massive buildings that almost touch the water are not going to leave much space for folks to enjoy the beauty of the Willamette and its river traffic. Another rule worth mentioning, design and program buildings to engage the public space. The ideal combination is to have both commercial and public uses as opposed to high-rise buildings that physically and psychologically cut off the waterfront from the surrounding neighborhoods. I cite these examples but I'm sure you're well aware of these. Let's look to the future a little bit. You're taking your family or friends to fields park to enjoy the sun, watch children run across the grass or get a close look at the waterfront. Would you rather say to your family and friends, see how the beautiful arch of the bridge appears over the water? I helped protect those laws. Or would you rather say, see those apartments buildings over there? Used to be able to see the arch of the bridge and the waterfront, but I voted to allow these buildings to be constructed. I hope I know what your answer will be. Thank you.

Wheeler: Thank you. Good afternoon.

Michael Roberts: Hello my name is Michael Roberts I live in the pearl at the sitka. I'm the manager of the pearl foot patrol on October 2017 I was elected to serve on the pearl district neighborhood association board. My comments today are as an individual, not representing the board. My testimony will focus on an email exchange that you have in front of you. It was an exchange between tva architects and the entire pdna board. It occurred December 27, the day of the pdna board was voting on whether to appeal and file the appeal. Tva seems to be frustrated with the democratic checks and balance processes of pdna committees and the board. The emails turn from frustration to in my mind intimidation with comments like, one, this type of appeal will serve to reduce your ability as a neighborhood to have a voice in upcoming development in the pearl. Two, the result I believe of appealing a project like this will be that the future projects will skip the pdna altogether which will greatly lessen your voice on development in your own neighborhood. Three, neither of these conditions not being met has merit as an appealable item so your appeal will only serve to delay the project by a couple of months. Four it is likely to cause members of the design team tva's design time, their jobs, and five it will also come at the expense of the good will between your group and the development community in general. This is not neighborly nor in my opinion an acceptable way to talk to representatives of a community. I have heard people say that they are afraid of the development community in Portland and there is nothing citizens can do to stand up for them. I have a different opinion than that of the development community. Don't I have a right to express it? Thank you very much.

Wheeler: Thank you.

Michael Coates: Hi, how you doing? My name is Michael Coates I'm a citizen. I had a bunch of great points to talk about but everybody else has brought them up and said them better than I have could except one very important thing. This project is a trojan horse and once in our gate it's over. Developers are buzzing around seeing if this is approved or not because that big ugly wall shown so graphically well on the slide show will happen and of course as politicians you know how unpopular it is to build walls these days, right? [laughter] I hope that you understand what's important is not the view of a bridge. That's not what it's about. It's not even about this building. It's about the riverfront future as stated of the city of Portland for citizens and visitors. It's the access. If that gets blocked we're in real trouble so this vote is much, much bigger. Your vote will have a big, big impact on the future for all of us. All I ask is you think very carefully, please. Thank you.

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Wheeler: I want to remind everybody, great points, but we are serving in the capacity of a hearing. So what we are actually doing here is looking narrowly at the appeal in the appeal process and the decisions that were made by the design review commission. I want to be very, very clear that in our role as a hearings body today we are very proscribed in terms of what we are looking at that. That's not to invalidate your point, I want people to be very clear about what it is we're doing here. I don't know if legal counsel wants to comment on that.

Rees: Essentially council is required to look at the criteria for the review and base their decision based on those criteria. So even if they find I'm not saying this particular proposal but on a proposal that maybe they don't personally like very much but they believe that it meets the criteria they are obliged to approve it if it meets the criteria. Not saying anything about this particular application.

Wheeler: I want people to be very clear about what role we are playing today as a city council.

Coates: Since I have a minute left a 1:59 may I continue?

Wheeler: Yes.

Coates: Yes, it's about the specifics but don't forget the specifics are there to support an overall livability and philosophy of what we're doing here in the city of Portland and in the pearl. So it all going goes together in my opinion. That's just my viewpoint.

Wheeler: Good point. Thank you all. Next three, please.

Wheeler: Good afternoon, sir why don't you start us off.

Glenn Traeger: Good afternoon. My name is Glen Traeger, I'm a board member of the pearl district neighborhood association and a member of its planning and transportation committee. I became actively involved in a Fremont apartments at the end of last year when I found this project would encroach upon the Willamette river greenway by building a high-rise apartment building within a few feet of the greenway path. I'm an active user of the greenway and could not believe the design commission would give away a 175 foot by 30 foot strip of riverfront property to a developer. The encroachment of the greenway buffer is a result of modifications requested by the Fremont apartments and should be denied. The greenway and its adjacent buffer should be reserved for the enjoyment of the public as mandated in the central city plan. I ask the city council to do two simple things. Just follow the central city plan. The pearl did not become one of the best neighborhoods in the country by chance. It took hundreds of hours of dedicated effort from Portland residents, city officials and land developers to establish guidelines for its development. The pearl plan, the river district plan, the north pearl plan, and central city plan were all created out of this effort. It is important that the Fremont apartments follow existing land use plans since it will be an important element in a large stage of future development along the Willamette river. Secondly, please listen to the citizens in this room. To the citizens at our town hall and to the hundreds of citizens who signed our petition at the fields park on a cold winter weekend and approve the pearl district neighborhood association appeal of the Fremont apartments. Thank you.

Wheeler: Thank you, good afternoon.

Larry Mazer: Thank you, good afternoon, my name is Larry Mazer. Modification number 5 gives the developer an extra 30.9 feet of building room that directly encroaches on the greenway. I sat through numerous design commission hearings and had numerous discussions with staff. I can tell you that those folks are dedicated and well meaning but they are also overwhelmed with the construction boom in this city. As a result parks and recreation only got involved in this process a few days before the final vote. I know this for a fact because I testified before the commission in November and pointed out that the width of the greenway walk was far less than the standard set out by parks and rec. Staff

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for the commission did contact staff for the parks for parks and rec after my testimony. Parks and recreation finally got a chance to weigh in via a letter dated December 15, 2017. I have attached that for you to see. While the letter addresses the width of the revised walkway, it is silent on the 30.9 feet giveaway to the developer because that ship had already sailed. This was an egregious mistake. While parks and recreation did approve the expanded walkway, it requested that the developer extend out the handrail another few feet towards the river. That shows you how desperate parks and rec was to gather as many extra feet as they could. So in summary, the design commission was approving a 30.9 foot encroachment on one side of the greenway when parks and recreation was begging for an extra two feet on the other side of the greenway. That is solely because they weren't involved on the front end for whatever reason staff didn't coordinate and parks and rec had no involvement in this process until literally a few weeks before the vote. Thank you very much.

Wheeler: Thank you, sir. Good afternoon.

Michael Gould: Good afternoon Michael Gould, resident of the pearl, thank you very much for this time. Most of my topics have been covered. I would like to speak to this as well if you look north of the Fremont bridge you see the nice, wide expanse ways of walk. You down in front of waterfront pearl its the same thing. The infringement and the pinch that's going to happen, there's no continuity whatsoever, to me it makes no sense. The other one that has been brought up and it also helps to going towards mass in this building, is this locker room for bicyclists. Certainly makes sense in a commercial building. I would agree where people may bike to work, take a shower, this is a residential building so you expect them to put the bike in, come back down stairs, take a shower and go back up? It's a loophole that's been exploited that I definitely think it's not even rational. Most of my points have been made, but I will say this is that I'm fortunate to work with a number of manufacturers that come into our beautiful town from all over the world. The great thing is whenever they see field park and they see the beautiful bridge and see the river it takes their breath away and I look at this city and I'm proud to be a resident of this city and I look at this and say it's like everyone said this building is just wrong place. Wrong place. I hope and ask that you just reject this design.

Wheeler: Thank you. Thanks all three of you. Next three, please.

Kristi Nash: Good afternoon my name is Kristi Nash I live in the pearl and I have no financial impact from this project but I wanted to speak to a little bit of the citizen's experience living in the pearl. I grew up in the country and did not have paved roads and I'm just now learning how to ride a bike at 48 and I did that in fields park and I thank you for that, I rode round and round until I'm comfortable going on the waterfront loop what we have on the east side. I always start and end at fields park. I get why this park is ranked number 3 for our city behind Washington park and tom McCall is our first, the dog park, the playground, I even watched the eclipse with 1,000 neighbors all with that majestic bridge as the backdrop. This bridge that cost us \$82 million is an historically significant bridge with the second largest expanse in the world and the library of congress lists it as the epitome of high-tech. I think our tourism community should be celebrating and promoting this. The view from fields park is iconic as it was mentioned San Francisco maintained their view corridors, we did not. My route goes north to the waterfront where I ride on the new boardwalk with its large art sculpture, people fishing, reading books, pushing strollers. Passing all the new development that does have a successful stair step down plan and a path that is open and I can ride freely without crashing into people. I'm a new bike rider as I mentioned. Let's not destroy this forever without consideration of what the voter and communities want and what is right for the reputation of our city. Before you vote I implore you to please go spend an hour in that park and look up at that bridge. Consider your

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children's children might someday visit and you may be able to say you saved that view. While remembering all of our words today. In closing it's not too late. My Santa Claus wish would be that we could reconsider and explore preserving that view corridor from the fields park to the bridge but I know the reality is not that. At a minimum please do not approve the Fremont apartment allowances for added height, mass and altering the waterfront trail plan. The community is counting on your leadership, thank you.

Wheeler: Thank you, good afternoon.

Loraine DeMerssemch: Good afternoon, my name is Loraine DeMerssemch and I own a condo in the pearl district. Most of what I intended to say has been said already, but I would like to make one short statement. I agree with the opinion of the chair of the design commission in her conclusion that the Fremont apartments proposed modifications negatively impact the Willamette greenway and width. Thousands of Portlanders enjoy walking and biking the pearl waterfront including myself. I live blocks from the proposed site. I ask that our appeal be considered and the impact of the additional traffic and parking also be considered. It has come to my attention that there are fewer parking spaces than there are units in this proposed project and I'm alarmed at that. Thank you.

Wheeler: Thank you. Good afternoon.

Melanie Yoo: Good afternoon. My name is Melanie Yoo and I'm a resident of goose hollow and I would like to present a slightly different perspective today. Let's pretend for a moment and picture a better world where there are laws against developing buildings that would block symbolic structures like the breathtaking Fremont bridge. Where the developers would have to be appealing here today to try to convince the council and mayor in a public setting that a monster building that would forever obliterate the perfect view of the bridge from fields park was necessary. What arguments could they possibly present that would make any sense to allow that? Instead, well, okay, to be clear I'm not against tall luxury buildings per se just against the location of this one in particular. Instead the opposite is happening. The reality today for Portland is our beautiful public views are under constant threat by developers looking to make a quick profit at the expense of people who live and work here. The issue is the same one we faced with working to protect mount hood and vista bridge views. We're talking about preserving iconic views and public space in Portland over all. Like the concerns many expressed at that time the issues are the same. We should give precedence to preserving a public benefit rather than obliterating it forever for the economic benefit of a few. Thank you for your consideration.

Wheeler: Thank you. Thanks all three of you. Next three, please.

Wheeler: Good afternoon, sir. Why don't you start us off.

David Mitchell: Name is Dave Mitchell I'm a resident of the pearl district and I serve on the board of the pearl district neighborhood association and I chair pdna's livability and safety committee. As all of you probably well know having been to the bay area one of the extraordinary assets of san Francisco is its embarcadero, a three mile long stretch of waterfront with virtually unobstructed view of san Francisco bay other than old warehouse piers in the process of being renovated one by one. Chicago, Illinois, has many miles of shoreline on lake Michigan that are protected against any further high-rise development on the east side of lakeshore drive. My childhood hometown of Portland, Maine, has taken major steps over many decades to refurbish and protect its historic port and waterfront from any high-rise buildings that might obstruct the views of Casco bay and its 365 islands. Countless cities across the country have come to realize the symbolic importance of their local rivers as vital resources that serve as a magnet for residents and visitors. Spokane, san Antonio, Pittsburgh, Minneapolis, Memphis, Cincinnati just to name a few. In san Diego where my wife and I lived many years before moving to Portland nine years ago, has vowed never, ever to repeat its egregious mistake of building a wall of three high-rise

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hotels and a huge convention center right on the edge of san Diego bay in the 1980s obliterating views of the bay and Coronado island unless you're visiting one of the hotels or the convention center itself. Henceforth any future development on harbor drive in san Diego bay must be set back a significant distance across harbor drive from the bay front to allow all to enjoy the benefits associated with a view of the bay. These examples are just a tiny sampling of American cities most of which were major industrial centers that formerly treated their rivers or harbors as virtual sewers and backyard to be hidden from view. These cities have all come to realize that the rivers and bayfront are critical assets to be preserved at all because of the for all to view and enjoy. From where I sit Portland has shown great vision in recognizing the Willamette as our version of san Francisco bay or the Sacramento river. Efforts to beautify the riverfront south of Burnside and extending to the south waterfront are highly commendable and excellent examples of what should be done with as much of our riverfront as possible, but allowing the Fremont apartments to be built as presently designed would in my view be a terrific blunder for a city that prides itself on enlightened urban planning. Frankly I can't imagine how any elected or appointed public official who claims to grasp the importance of our river as a symbolic element in our city's dna could possibly allow this giant structure to go forward as currently configured. In this particular location it's way too massive, way too tall, and it's way too close to the river. Thanks very much.

Wheeler: Thank you. Good afternoon.

John Wertzler: Hi. My name is john wertzler, I'm pearl district resident. I support the pearl district neighborhood association's appeal of proposed design of the Fremont place apartment high-rise. I'm against this project for the following reasons. First the proposed development will obstruct the view of the Fremont bridge and fields park as mentioned. This bridge was designed to be artistic as well as functional. It's become an iconic structure symbolic of Portland, a city divided by the Willamette river but united by its bridges. Obstructing the view by allowing a high-rise construction along the river creates a physical and visual barrier to the Willamette and isolates neighborhoods from this natural resource that is uniquely our own. Second, the developer has discounted the importance of the public greenway in order to maximize the size of the proposed building. Construction along the Willamette river should not be allowed to constrict public right of way along the river like the proposed Fremont place apartments project does. Maintaining a public walkway of 18 to 25 feet along the river should be the starting point for any proposal, not an afterthought. Third, a proposed building has been granted excessive height and square footage bonuses based on amenities that are ill-conceived and disingenuous. The result is a building that is too massive and too tall for the lot size. It includes a restaurant with limited parking, a bike locker and shower facilities that are not likely to be used in a residential building. A walkway that pinches pedestrian and bicycle traffic to less than 13 feet. An artwork that is disguised as park benches and fourth, the proposed building potentially sets an unfortunate design precedent for other development along the Willamette river. Future development along the river including centennial mills, albert mills parking lot and other sites north and south of the Fremont bridge will take their design queue from what is decided about this proposed project. Such a design precedent will create a canyon like effect along naito parkway and front avenue and limit access to the river and greenway. No doubt you have heard from many Portland residents objecting to the proposed project because it obstructs the aesthetic and iconic view of the Fremont bridge. In closing I would like to suggest that the real issue to be addressed is not the view of the Fremont bridge but the vision for development along the Willamette river. It's not the view, it's the vision. Please consider your decision on this appeal and keep it open to all of those and connecting our neighborhoods.

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Wheeler: Could I ask you a follow-up question? Cause you raised some good issues here. So the vision is really encompassed in the base zoning.

Wertzler: Correct.

Wheeler: The bonus system preexists, it is just -- it factually existed. So the question isn't for us today, should the bonus system exist, although that is something we could certainly take up at a later date. You mentioned on one of the bonus issues, and I heard somebody else say the same thing, and I was confused when I heard it once, now that it's been said twice, I need to dig in a little deeper, there's a contention that the bike storage will not be used in a residential building, could you explain why you believe that to be the case.

Wertzler: So if each of the units has, in fact, been required to have bike storage within their units who's going to use the bike locker, who's going to use the downstairs shower facilities, I think it was pointed out, it is a loop hole that has been exploited by the developer that is typically found in the commercial buildings in the city and a residential building doesn't make as much sense.

Wheeler: Got it, thank you for clarifying that, I appreciate that. Good afternoon, sir.

Roger Leachman: Good afternoon. My name this roger leachman I'm a resident on southwest Vista and I serve on the board of the goose hollow foothills league. I'm here to read statement by our president Michael Mehaffy who could not be present. Prefaced by saying I believe most all of us in goose hollow support our colleagues and neighbors in the pearl because for all of us its about neighborhoods, with apologies to Robert Frost good neighborhoods make good cities. As others have argued more cogently than I could this project does not advance that. It's ironic that they named this thing after the view it destroys and now I'll read a statement by Michael. "Although I am president of goose hollow, I write this as an individual and professional in urban development. I'd like to note that is unfortunate that the debate around this and other projects has been framed as being about loss of views from private homes. When what is much more important is the loss of iconic views from the public realm and the degrading of our urban commons, more deeply, I think the debate is ultimately about what kind of city we want to become. Should we be a city that surrenders its heritage in an ill-considered rush to address its short-term problems with a simplistic build, baby, build solution. Are we disturbed by the growing uglification of our city. Will we accept the premise, in spite of evidence, that can't build more housing and preserve the very qualities that make our city so attractive in the first place or will we work more diligently to balance developer profits with the wider, long-term interest of the city now, and into the future. Will we work to ensure that new construction is easier to build, is more affordable, does not destroy existing affordable stock, does not destroy iconic views or otherwise degrade the public realm, and is as beautiful as the city around it. I think that is the ultimate question". Thank you.

Wheeler: Thank you, sir, thanks all three of you. Next three, please. Good afternoon sir would you like to start.

John Gillette: Thank you very much. I'm john -- doctor john Gillette, retired geriatric psychiatrist and in the several year resident of the pearl district. I'm very interested in the quality of life and opposed to this building project. I've previously sent you a picture of a plaque that I found while riding my bicycle on the sellwood bridge that said the city of bridges and then listed all of our bridges and talked specifically about the unique aspects of Fremont bridge and as you've heard some people, due to its public design being the bridge of the people. And I've been hearing all the wonderful presentations today, I'm going to limit my comments quite significantly. I did get involved in approaching people at the fields and taking -- getting signatures for the protest and this particular appeal and 98% of the people I talked to were very interested, signed up, et cetera. And did, indeed, think that the particular view of the Fremont bridge, the potential destruction would be

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devastating. As a bicycle rider, you ride on the greenways and the proposed restriction, then the shadows and stuff with this project would involve, I think would be very detrimental and should be avoided. Obviously any kind of building onto greenway space will mean that it will never be recovered and available as initially planned. As a bicycle rider and a living in a condominium, the fact that they've utilized some of the space to increase the height and building area is a bit disturbing, I occasionally have to take my bike to my room, rather than storage in the parking garage, take it into the apartment, I can imagine that people, having to use the storage in their apartments would be carrying -- carrying their bicycles up in the elevators and scratching doors and walls getting them into the units. Lastly, I think there's concern around -- well, how much of a concern, but I guess to be a restaurant in that area. Which may be nice, but it seems like about location maybe not the most workable thing and perhaps just there to change the nature of the building to allow for other modifications, I will close with saying that I am concerned about the slippery slope effect and that other things may be forthcoming that would be further detrimental.

Wheeler: Thank you. Good afternoon.

Brooks Hickerson: My name is Brooks Hickerson and I live close to the Fields Park, I'm there every day. I'm also a member of the PDNA, and I'm also a member of the Friends of Pearl Walking Patrol. I paint outdoors in Portland every day, I go outside and paint the iconic views of this beautiful city. This is one of the -- this is one of the reasons I moved to Portland, okay and I'm a member of several painting organizations in the eight years I've lived here, I've painted hundreds and hundreds of views, and dozens of views of the -- of the bridge as well as -- as well as Centennial Mills. I oppose the Fremont apartment construction as it's currently proposed, the height proposal and the back from the river, I paint along the river all the time, will be a personal loss to me. You can't block out these views, you see I've done it right here in this picture, and you personally are about to vote on something that's about to do this, okay or you can limit the development to -- with the current limits, back to what they were originally designed to be, I urge the city council to stick with the current development limits and not grant the exceptions. I do support the appeal, and I hope you will too. Thank you.

Wheeler: Thank you, sir, good afternoon.

Sally Mize: Hi, I'm Sally Mize. I've lived in the Pearl for seven years as a renter, and I am really a person that is ground-level every day, all over the city, up and down both sides, and I'm 100% walker, cyclist and transit user. So I am out there. I call myself a boots on the ground person. I lead a foot patrol in Pearl through the Livability Committee with which I participate, and I love my city and as a whole, not just the Pearl. As I'm around it, especially in the walkways, I think of two bridges that are icons, visual icons, one is Tilikum in all its beauty and the thought of protecting all the people, and it's relativity to South Waterfront, which has beautifully enhanced their riverfront by keeping low setbacks for the buildings and also adding an absolutely beautiful urban park that connects with trails that already existed for many years. So has the Pearl done that, and we are gradually trying to do that throughout Portland and beyond, but I ask you to think of that and the Tilikum bridge as the south end icon and the Fremont bridge as the north end icon. And I walk that at least three times a week, and I stopped the other day and looked back from the north end of Fremont bridge, and if you want to preserve the whole major curve of the Fremont bridge, look at it from there. They have done residences, completely beautiful setbacks to exactly and ended them -- the setbacks and begun their buildings between front and the river. So that the whole curve shows. So you've got an immediate north of the iconic Fremont bridge and you've got lots of river south of it, let's protect it for all of us, please, I invite you as a walker there to come down, I can show you in 30 minutes exactly the problem. Thank you.

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Wheeler: Appreciate it. Thank you, all three of you. Next three.

Linly Rees, Chief Deputy City Attorney: Before you do that, I don't think we have had the privilege of somebody submitting a work of art into the record. I don't know if -- is he willing to part with it.

Eudaly: I'd like a picture.

*****: I can send you an image.

Wheeler: What if we took a picture and submitted the photo. We don't have to take his painting. We probably can't afford it, it's quite nice.

Eudaly: I can submit the photo into the record.

Wheeler: Is that acceptable if we just use the photograph.

Rees: I think the image from commissioner Eudaly if she gives it to Karla that would be great.

Wheeler: Next three. There's a bit of a delay, so we can wait a minute. Karla, if we have people in the overflow room, looks like we still have some space upstairs, I don't know if they're limiting the number upstairs. Let's read three more names and see if we can get some folks, we'll accommodate people as they come in. Okay, good, why don't you go ahead and start.

Jeanie Coates: Yes, thank you, my name is Jeanie Coates, I've lived in the pearl for a little over four years, and I want you notice I have no notes with me. I don't need to go through a litany of points because I think my predecessors have all done a wonderful job of that, but I wanted to speak to you from the heart. I was born here in 1951, at good Samaritan hospital, I've lived virtually my entire life here, and I love it. I love our views and mountains and bridges, our waterway, all of that is very special to me, I even remember when they floated the Fremont bridge down the river and up into place. Very special memory. So I want to call upon you to look for what is right for the city of Portland. Use your vision, use your power, Let's get this project redirected and back on track.

Wheeler: Thank you, good afternoon.

Kevin Cosgrove: Hi, my name says Kevin Cosgrove, I've lived here since 1980. Like many of the people who testified, I came here because of the attractions of the city which has an international reputation. It also has a reputation for its planning and its care about the process to approve certain projects. I'm going to focus, having heard many of the people talk today, on the specifics of the way that this building was approved, the process that was gone through, the fact that it's been testified here today that there were certain, if you like, short circuits that would appear to have been taken in order to get this project under way and I would ask you, each of you, as the stewards of this city's reputation, the stewards of this city's heritage, to pay close attention to the facts in the way that your attorney has pointed out, that this isn't about the motion of people saying where's my view of a bridge, this is about people saying, not only where's my view of a bridge, but how did that apartment building get to the point where it could be approved in the way that it has been. So in my opinion, you, you, you and the man on the phone have an enormous amount of history to look at and an enormous amount of legacy to take into account.

Wheeler: Thank you. Good afternoon.

Stephen Kafoury: Good afternoon, Mr. Mayor, members of the council. My name is Steven Kafoury. I do live in the pearl, but I live in the southern portion and my view is to the south, I have no individual interest in this appeal. However, as a citizen of the city, I have a huge interest in the outcome. For decades, I have been involved with and supportive of the planning process that has made this one of the most livable cities in the world. This proposal flies in the face of all that planning. I agree, along with the citizens here today, although height and density are desirable, we all live in high rise buildings and in the pearl after all, this project is the wrong size and wrong place. This city made a huge mistake on

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the east end of the Burnside bridge, allowing what one commissioner has called an eye sore. Please don't make another one on the other side of the river.

Wheeler: Thank you. Thanks all three of you. Next three, please, Karla.

Wheeler: Go ahead and start.

Jeffrey Kash: I'm Jeffrey Kash, I'm a resident of the pearl and want to speak again, people have said most of what I want to say, I want to recognize a couple of points and want to specifically point out that the developer received a variance, that's what's really the issue of what we're talking about today, of whether the variances should have been granted to build a building that in particular, that I want to talk about is the encroachment on the greenway. In some places it's as narrow as 13 feet now and 25 feet maximum. The developer was given 30 feet to develop, which belonged to the public and I simply look at the plans for future development in Portland, which I generally support and I know we're going to see more and more people in the urban core, more and more people living there and more and more people coming in for the afternoon or evening, we need more parkland, why should we give a variance to a developer that gives away parkland that we already own. Many years ago, I think someone else mentioned it, tom Mccall park was wharves and all kinds of things and then road or freeway was going to be put through there and people had the foresight to say no, that land is far too valuable for those uses, we need to hold it for the public, why would we give away other land in an area that we know we'll be having more people in. So that's my question and I might want to comment, I want to thank you for your attention to all the people who came today. Thank you.

Wheeler: Just one interesting historical point. The city actually went farther than that. It was the harbor freeway, and we reclaimed that as a green space, that's not part of this hearing but as a historical point of note.

Kash: Thank you.

Wheeler: Next three. Good afternoon.

Geri Marze: My name is Geri Marze I live in the pearl and I have a few things to say. The Fremont apartments is asking for modifications to their building with two being significant deviations to the building structure. Those are encroaching on a you 45-degree river setback mentioned earlier and also increasing the depth of their building from 200 feet to over 230 feet. So a five-story building is going to tower within a couple of feet of the greenway to build a restaurant. When did we start trading off our green space along the riverfront for restaurants? I have not heard a valid reason why these modifications make this a better project and also the Fremont apartments will be the first in three building sites to be developed on the pearl waterfront since waterfront pearl. The Fremont apartments will set the stage for this redevelopment and therefore needs to follow city regulations, which are based upon a joint neighborhood, landowner and city land use planning effort. Thank you.

Wheeler: Thank you. Good afternoon.

Christian Maynard: Good afternoon I'm Christian Maynard Philip, I'll keep this short and sweet.

Fish: Can you get just a little closer to the mic? Can you move it towards you.

Maynard: Can you hear me now?

Wheeler: Yes, thank you.

Maynard: My name is Christian Maynard Philip, I work and am a home owner in the pearl, I'm also the pearl district neighborhood association treasurer, I speak on behalf of myself, not on behalf of the pdna. I am here to represent the next generation of Portlanders that will make their homes and build their businesses in the pearl. I urge you to carefully consider our very legitimate grievances as well as a legacy of this decision.

Wheeler: Thank you, good afternoon.

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John Hollister: Hi, my name is John Hollister and the plan was to have us be a team, like a nine-minute team, so I wanted to -- they both used less than a minute and a half each, so I'm asking a little too late, I think, but.

Fish: We adopted that rule, we'd be having people speak forever, and our rule is three minutes per person.

Hollister: That makes sense, I understand. Here we go. My name's John Hollister, PDNA board member, planning and transportation committee, but today I'm speaking as an individual. I met all of you last March 29, the day of the famous lockdown, and then met you again on June 14 and -- at the Pearl East appeal and Mayor, you said, as you said today, that your decisions today are constrained and approval criteria and interpretation and you also were concerned why I was alone. I'm not alone today. Slide one going. Okay, the design commission's been busy and the -- there's a tremendous -- I have tremendous respect for all these volunteers, and there's just so much work, there's no way they can spend as much time on every issue as someone like me might on a single issue. So I think that they've done a good job, but there's just too much to cover, and I think the same thing for staff, I think Ben has done a wonderful job as well. Okay. As it's been said here, this building is much more than about the view, but the view is pretty iconic. I am the only one testifying about the view corridor, this is not about the view corridor today, but you can see that with proper notification or with better communication from me, we would have more people talking about that. Going through these very quickly. How do you correct a problem -- how do you correct a mistake once it's been made? Here is an aerial where the -- for orientation, somewhat in the middle there is the parking lot where the project is going to be going and to the farther right are the two towers of Waterfront Pearl. The rest of my presentation, 41 seconds, will focus on the precedents mentioned, the precedents referred to simply don't match up, the Waterfront Pearl -- this is a water feature, the water feature in this proposed project, I read it again today, it is a storm drain and in the Willamette. Here's pictures of the different view corridors with the openness of the Pearl, of the waterfront. This is a greenway, 50-foot greenway, they got extra feet, but it's a 50-foot greenway, not 25. So this is the view there and when you take all these into consideration the amenities that are given for those extra types of things are very significant, and when all of them just went for one of the major ones, these went for both and another and another. I'm in sales, and if I can get seven things, I'll give seven things and think I didn't ask for enough. That's what they did and I'm done.

Wheeler: Appreciate it. Thank you all. Next three, please.

Moore-Love: That's all that was on the list, did anybody sign up who didn't hear their name?

Fish: While we're bringing people forward can I ask legal counsel a question?

Wheeler: If you've signed up, please come on up. Thank you. Sure, Commissioner Fish.

Fish: I want to ask our counsel a question. A number of months ago, we took up a major reform effort around boards and commissions, and one of the components of that effort was we wanted to encourage minority reports and some mechanism for minority reports to come to counsel so we get the benefit of split decisions. We have had a number of people testify today that Julie Livingston, the chair of design review was in the minority in a decision below. Has perhaps authored some opinion on this project, but it's not part of the materials that are in my packet. So I guess I have two questions, one is, what is the normal procedure for us to have the benefit of a dissenting opinion, if someone presents it, and how does that -- how does that information come to us, because it's a little odd to have it filtered through people testifying in favor of the appeal, with all due respect, it's not the equivalent of actually having the report that Julie has apparently authored, what are your thoughts on that?

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Rees: So first of all, generally speaking, I won't give you a legal opinion on first impression in a large public setting because I haven't had a chance to think through this, and I've not been the one primarily involved in boards and commissions, it's my understanding that is in the process of implementation. So I don't suspect that the design commission has had the opportunity to address that issue, whether -- I know there are boards and commissions I have worked with, for example, the charter commission, that decided to provide both the majority and minority opinion on things, but I don't know that they've had the opportunity to consider that yet.

Fish: Is it your view, though, conceptually, that any written opinion by a commission member is part of the record before us?

Rees: Not unless it's not placed before and rejected by this body. The record consists of what's put in the record, I just honestly don't know.

Fish: But that's not put in the record, it's not technically before us, so the other option.

Rees: I don't think there's anything that would prevent it from being placed in the record, I'm just not aware there is such a thing.

Fish: The other issue is, we frequently have hearings where members of the design commission testify and nothing prevents a dissenting member of the design commission from coming to testify, does it?

Rees: I believe they have recently adopted new bylaws, I don't know that there's anything in there that speaks to that. There's nothing in our code that would prevent from doing so. I don't know that there's anything in by-laws to speaks it.

Fish: The reason I raise it is that by the time something comes to us and it's already had a hearing and a robust debate, I mean, I have always found it very useful to see the thinking of the design review commission, we have thoughtful appointees who put a lot of time and energy, it is fairly unusual to be told that the chair dissents on an issue, I can't think of the last time that was a fact before us. And if that -- if someone in the minority chose to write a report, it may or may not influence my thinking on the subject, but it would seem to be useful to have access to that so I'd have the benefit of their thinking and when people are testifying about someone's dissent, I'd actually rather read the words of the person who wrote it and make my own judgment than hear secondhand. I don't know how to address that, but -- because I don't think this has come up before.

Rees: So I was just thinking staff came up and had the same thought, which is that when the -- just as here, when you vote and it's not a unanimous decision, you have the opportunity to say what you're thinking and why you're voting the way you are, the design commission does the same thing, one thing in the record are both the minutes and the tapes from the design review commission's decision, and that is in the record and you have the opportunity to review that as part of your decision-making here. Staff can make that available to you.

Fish: Okay. Thank you, that's very helpful.

Wheeler: Good. Thank you. Last two people, thank you for your patience. Would you like to start, please?

Sherry Green: I'm Sherry green, I live in the pearl, I've lived in the pearl since 1994. So I'm an old-timer and the one word I would like to speak about today is precedent. When I bought my house, I live on your Irving and everything behind me was just totally empty. I could see -- that was nothing in the pearl and I knew that being a wonderful place it was, it was going to get developed. I called the planning commission and I said I'm curious as to what else you have planned and I was told, very succinctly, there was going to be a four-story limit of buildings in the pearl. Now, this is 1994. I'm not really good at math, but I can sure count more than four, I can tell you that. My concern is that if this project passes, as it is, it's setting a precedent. It's a precedent I don't think we want to have. That's all I have to

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say.

Wheeler: Well said, thank you. Good afternoon.

Rod Ohearn: Good afternoon Rod Ohearn I've lived in the Portland metropolitan area for the last five decades. Thanks for the opportunity to voice our opinion. I agree with the chairman's decision on the negative impact that this will have on the greenway. Not only do we enjoy the splendor that this particular area provides, the views, the walking paths, the bike paths, but all of our relatives are coming into town, the people we ask to come visit us, this is where we bring them, not only to the restaurants, to the different entities that our Portland provides, but the river, it's huge. Also, we spend a lot of time on the water, kayaking, boating, rowing, I wish I would have made a picture of what it would look like from the water and the skyline. The reason myself -- myself and my gal live in this area, is because the community, it's the people. They're kind, considerate, they're connected and they care. I can fully understand why the developer sought for these modifications, there literally are millions of reasons why, typically all start with a dollar line and end with a decimal point. Few people will actually benefit by this. The wealthy investors, the owners, and contractors for a short period of time. There's millions of reasons why and millions of reasons why not. That's the people that live in Portland, the Portlanders, the people who enjoy this city, every person that elected you to become the good stewards of our property and our environment. You are the caretakers of our community. Just like the caretakers from the past, the elected officials who designed the codes that are now in place, there's reason for those codes. It's to protect against the few. Now, we understand that we can't change progress or the condos or the development, but the so-called modifications, it's a very gentle word for what's happening, especially for such a dramatic impact to our city and the environment. So we would urge you to be good stewards with our riverfront properties. We would urge you to be the elected officials and to make the right decisions for our community. Allowing the modifications is not being a good steward for us and our property and the community. It's likely that the day will come in your future when you're not in politics and you're walking along the riverfront and you will say to yourselves, with your kids or grandkids, I made a choice, I made a good decision. We all, our community will be better off without the modifications. Thank you.

Wheeler: Thank you, thank you both, thanks for your patience. Very good. Next we will hear from the principal opponent, if my memory serves correctly, you have 17 minutes and 4 seconds. Name for the record, please.

Allison Reynolds: Hi, I'm Allison Reynolds with Perkins Coie and we are land use counsel for the applicant, Lincoln property company. Today I've got with me Patrick Gilligan, who is with Lincoln property company and after I'm done with this, he'll talk a little bit about Lincoln's investment in the city and this project specifically. Then also with me at the end of the table is Tim Wybenga with tva architects. Tim has been the principal architect of this project and has been working with the neighborhood and design commission on all the various changes that took place over about a year and a half period to try to bring this project to what it is today. Which we think is something that provides a lot of public benefit and a great design for the site, but my job here, I guess, is to talk a little bit about a couple of the legal issues that were highlighted by the appellants and I won't go into huge amount of depth with these today, we did submit a written argument to you a couple of days ago that I hope you guys have and if you have any additional questions, we are happy to answer those. So the first issue I think is one that you've heard a number of testifiers talk about today and that is the floor area ratio calculation for the site. As you probably know, under the development code, you have basically a size of a property, and then that gets multiplied by a number, and that equates to the amount of area you can build in a building and that of course has to do with if you have a design overlay like this

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property does, because you have it, doesn't mean you can build it, it does give you sort of a legal limit for how big the building can be. So the first question about that was raised as to whether or not for calculating that size of the underlying property the greenway setback and public plaza area should be contained as part of the site or excluded and opponents of the project cited code section that is actually not part of the code that governs this project. So as you guys know, the code can change from the date of application to when you all actually are seeing this in an appeal setting. This project was submitted in November 2016 and the code section that was referenced is actually something that was adopted on March 31, 2017 and so that reference is something that you should just be aware does not apply here. And the code in effect at the time is clear that ownership is what encompasses that site and things like easements for the greenway or a public plaza you provide on your site do not deduct from that total square footage. The second issue is one that is really in the legal weeds and I will try to simplify this, but the question of exactly how far toward the river the site actually physically stretches. Opponents are correct that back in actually the 1800s, there was a determination by the Oregon legislature of where the state actually owns, versus where private parties own, but there was actually a four-year period during which legislation dedicated that back to private property owners and if you perfected your site during that time, you actually then own that little sliver between the ordinary low and the ordinary high and that is the case for this property. We had discussed this at length with staff, it was a big part of our due diligence because we do not want these folks to design a building that cannot be built on their site. So we actually would like you to leave the record open until Friday so we can submit all of this material, we had discussed it with staff, and I believe they have it, but I don't think it's part of the formal record, we want you to have the benefit of that for this appeal.

Wheeler: Could you stop the clock for a second. I want to discuss a question, could you go a few sentences deeper on that. So there was some time period by which the state granted property owners the ability to go all the way to the I would assume the low tide line. Is that correct?

Reynolds: Yes.

Wheeler: How long did that time period last and when was the time period?

Reynolds: That was between 1874 when the legislature enacted legislation, which essentially deeded the submerged lands that are between ordinary high and ordinary low to the owners of the adjacent upland and then they repealed that legislation in 19 -- 1878. So it is during that he four-year period in the 1800s, if you actually perfected the deed to your property, you were go governed under the law that was in effect and then was repealed.

Wheeler: So, your contention, and you say you have me documents to back this, I'll trust you on this, for the time being, so your contention is during that period between 1874 and 1878, whoever owned the land did, in fact, perfect the deed?

Reynolds: They did.

Wheeler: That has been passed on?

Reynolds: Yeah. It has never been carved out. Yes, exactly. To eventually when Lincoln property company became the owner of the site.

Wheeler: All right, thank you. Start the clock again. I was just curious.

Reynolds: That is all I will say on that issue, just know it was fully vetted by our team and we will provide those document to you. The other two quick legal issues, first the locker room floor-area ratio bonus, the code is clear that if you in an ex or cx zoned site in the city and you meet the various requirements of that for a mixed use building, residential building, commercial building, you are allowed to have a locker room and get a bonus for that for far. We should just note to you, we have one shower for male use and one for

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female use, we provided two and then we have a few lockers associated with that, but it's no bigger than that. We feel that if a restaurant employees or other employees of the building were to bike to work, that would probably be the primary users of that, rather than folks actually in the units, but they would be available to anyone who used the building.

Wheeler: Could you stop the clock again, so the contention was made during testimony that and I may have misheard the individual, so I apologize if I did. That you're required to store your bike in your apartment, or did I just mishear that

Reynolds: I don't know actually if you misheard it or not, but as far as what the code requires, you -- the building is required to provide a certain number of long-term bicycle parking spaces and those can be provided in your unit or in a common area, so this project actually provides one bicycle storage, I guess, it's a rack that goes in the unit, per unit and then we will also have an additional bicycle storage area with places for more spaces. The code actually requires more spaces than could fit in one per unit. So we are giving more than that.

Wheeler: Very good.

Fish: So, just to be clear your view is that under our code that applies, your client is entitled to 175 feet?

Reynolds: For height?

Fish: For height.

Reynolds: There is a modification that you can get under the code that would allow the design commission by finding that a height of 175 feet on this property better meets the design guidelines and is consistent with the purpose of the standard height here to be modified to grant that height. I don't want to put words in the design commission's mouth and I know that Tim can probably speak better to how that occurred, but that was the finding that essentially a building with a podium and tower that kind of swept sort of one side of the bridge better met those guidelines than 100-foot building would have been able to.

Fish: So, it's not an entitlement, it's a discretionary action and so we got a lot of testimony about the impact on the greenway. So how would this project be different if we preserved a 25-foot greenway?

Reynolds: That is something we discussed at length and the legal submission that I sent in. I think the staff also talked about this too, but just to make clear, there is a 25-foot setback from, I believe it's here, a sea wall on this property that encompasses the greenway, our project then sets back, I believe, another approximately 3 1/2 feet from that to the closest point of the project to that greenway. So we are preserving not only that required 25-foot greenway setback, but then an additional setback. The setback being modified for this particular property is actually an angle where once you have achieved 35 feet in height next to the greenway, you are supposed to step back one foot for every foot up you go. So it essentially creates this 45-degree angle back from the greenway that your building elevation is supposed to meet and this building is requiring a modification to that to allow essentially the building to kind of encroach into that little angle area.

Fish: That setback would not address the concerns people raised about the view from the north?

Reynolds: I believe.

Fish: From the southeast? That would affect the look of the building from the river and the setback?

Reynolds: So the modification is to that standard. The greenway setback for the north pearl, I believe the reason that was actually done was to allow the building to have the orientation that it does in order to preserve those views. It kind of works in context with the other modifications in order to place the building where it is and preserve the view that is

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being preserved.

Fish: Since we have a lawyer here advocating for one side. Let me ask you the question that I asked the other side. In a transitional neighborhood where we know that many of the parcels will be redeveloped, what is the appropriate definition of context?

Reynolds: I mean, I think that is almost a harder question for a lawyer to ask than for a design professional, but here, I believe that we were thinking of context in sort of the developing nature of the north pearl neighborhood, and not just looking at the buildings next to us because these are not buildings that are -- I have no idea when they will actually redevelop, but it seems likely they will redevelop in the future. And so part of the context, I think, is sort of the neighborhood it has come all the way up to naito and so is making sure we are integrating with both things that are around the way the river integrates with the project and the other developments that are kind of part of the north pearl, but separated from this by naito.

Fish: Thank you.

Reynolds: I think that's probably good for me, you've heard too much from the lawyer for a design review proposal. I'm going to turn this over.

Saltzman: I have one question for you.

Wheeler: Commissioner Saltzman.

Saltzman: So you said the site development or the site area calculation was changed in March 31 of 2017?

Reynolds: Not really. It's just that there is a code section that was added to the measurement section that being relied upon by appellants when they make the argument that those areas should be taken out of the site. We actually would argue that under the code today and the code when this project was actually submitted, that both of those support our interpretation, but we were just pointing out that the argument is being made based on that code section and that is not something that the council is able to consider because that is not a code regulation that applies to this project.

Saltzman: You're saying it was a code interpretation in March of 2017?

Reynolds: It was actually through one of your code changes, the recap process, I believe it was recap 8. That added a number of different sections to the zoning code, it was during that point that was added to the code. So it's a new code section completely, it does not exist in the code that's in effect for the application date of this project.

Saltzman: In your opinion, then, the current definition far area should include the esplanade, the north and the greenway section to the east?

Reynolds: Yes. In our opinion, the definition of site is an ownership, and the property owner here, Lincoln, owns both the area that has a greenway easement on it and the plaza area that was in question.

Saltzman: Okay, thank you.

Reynolds: With that, I will turn it over to Patrick Gilligan with Lincoln property company to tell you about his role and then we'll move on to Tim Wybenga with tva architects.

Patrick Gilligan: Thanks for your time today. Developer of the project, just gets to calm a few rumors here, I'm a Portland resident, live five blocks away, office across the street, oversee a local staff of 25 people and am responsible for roughly 50 buildings representing 4.5 million square feet in the Portland metro area, so, I'm definitely here, this is home. You know, this has been a really big project for us, we spent a lot of time, set a goal of being transparent, working with staff, working with design commissioners, it's been a long battle, we are really excited with the way it's come out, and the design we have today and are excited to hopefully keep moving it forward. Other projects that we work on, wells fargo center, pac west center. This is home for us, we are committed to Portland and making the city a better place as much as we throughout our projects, so thank you for your time. I'll

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turn it over to Tim.

Tim Wybenga: Tim Wybenga with tva architects. As Allison said, I've been part of this project from the outset, I'll kind of try and quickly go through a year and a half worth of process in the next seven or eight minutes and then there's some pieces of information that are in the back of the printed packet and the slides here that are really graphic illustrations that help represent some of the points that were made in public testimony. If you have any specific questions, obviously we'll be happy to come back to those. First thing in general is just looking at the site, so this is a surface parking lot, so this is not a park, it's sort of an anomaly on the waterfront that we have two low-scale sort of suburban style office buildings and a large surface parking lot. So in the site, not to revisit this too often, but these diagrams that you've seen in other context really describe that the difference between -- we have tried to be very clear about the difference between the allowable base height, base floor area and those pieces that are available to us through bonus and through modification. This just kind of gives a general look at that from this general understanding of the allowable scale and volume of this. We did several studies, and many, many studies, these diagrams show what's important about this. We have said from the outset, it's been quite clear, there is no protected view from fields park, there is no protected view really anywhere pertinent to this site. However, we recognized that what a lot of these people said at the outset and through the testimony is correct, this is an important part of Portland and so from the beginning, we have said, let's see what we can do from a good neighbor standpoint from day one of this project, to mitigate this with -- without the requirement to do so. What you see in these studies and see throughout here is we took that view from fields park as being important and have studied the mass of the building, what's happened through the process is we have actually moved mass out of the podium, which would have more of a negative effect on that view and you pulled it towards the tower and there's a few more things that we kind of go through. This diagram is one you may have seen previously and then put it in this presentation. This describes the project by right, which is the 100-foot red-orange block, it -- you can kind of see where we have moved volume out of that building into the tower element to increase the visibility of the bridge and again, this is from one specific vantage point. As you know, just about every building in the pearl and downtown obscures the bridge in some way, most of our relationship with the bridge is -- isn't a complete span of the arch until you get to the waterfront and we'll kind of get to that as well. In terms of the process and there's been a lot of, I think, mistruths being told in terms of the way this might have been pushed through or something else, we met with pearl district neighborhood association, myself and my colleagues, four times, for two or two and a half hours each time, talking through the Manisha project and the big vision as well. There's me presenting that same view diagram to the committee, we have spent a lot of time on this with the neighbors and did so not as a requirement because we wanted the neighbors to be on board and wanted to get that input. Similarly, there's no shortage of public process besides pre-apps and we have had a design advice review hearing and we've had four public hearings, so no shortage of opportunity for public comment and no shortage of iterations to go back and forth with the design commission. To that point the next plan is the site plan as it existed at the time of our dar. There are substantial changes here in the next couple of slides that have to deal with our interaction with the design commission and also with the neighborhood. First and foremost is that in this plan, we had a really a combined pedestrian auto court on the north side of this building to try and get resident vehicles into the building and then to the east of that was essentially a lawn area. Through secondly, the other thing you'll see here is the greenway trail itself. So that represents the existing condition of the greenway trail which at the time we were intending to leave. Another thing that came up and I'll go through the --

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so this is where we ended up through the process, so what was a ten-foot public access to the river combining cars and pedestrians is now a 60-foot wide major public space. Designed as a multi use space to bring residents of the pearl to the river and to bring activity to the river. Similarly, through our interaction with specifically with the pdna, we went back on the plan of leaving the existing greenway condition, partly because it's not particularly friendly and one of the primary things we got out of those meetings was the existing trees are riverward of the greenway, the trees themselves become an obstruction, so in redesigning this we have tried to prepare -- design something that will increase public amenity.

Fish: Can you keep this slide on for a second, so there's been a lot of comparisons to riverfront pearl and I ride my bike through riverfront pearl a lot. Can you explain to us how bikes and pedestrians are meant to navigate this particular greenway?

Wybenga: I can. I have another exhibit that kind of describes the section, what I can tell you is the existing greenway -- the greenway is 25-foot wide as an easement, it's required to be a combination of plantings and hardscape, the existing hardscape at the narrow points between the tree well and the edge of walk is 12 1/2 feet. That entire stretch which we probably run or ridden your bike about 1100 feet here between this parcel and the Fremont bridge is to that same standard. What we have done here is try to acknowledge the fact that we have a 13-foot minimum width, which we have gone through and entered a process with parks and the neighborhood to get to that number and a 18-foot average width so, 13 feet is the pinch point and part of what we are trying to do here, the greenway ends here currently. What we are trying to do from an urban planning and design perspective is something that deals with the fact that this is a transitional space, for the time being, a 25-foot wide sidewalk that goes and cuts off at the end, at the current end of the south side, essentially is one of those freeway off-ramps that never went anywhere. So what we tried to do is say design something that has a better experience for pedestrians and for the neighbors. Does that answer the question?

Fish: Yeah.

Wybenga: So here's that existing condition. So the greenway itself, relies on it, it's adjacent to the surface parking lot and the greenway trail ends there at the upper left of the site. So our proposal and, again, there's been a lot of talk about cutting off the river or not providing access to the river, I think this image essentially shows what we have come to through this process, which is a substantial 60-foot-wide public space that directly links people from naito parkway and eventually to the pearl to the river frontage and then augmented design for the greenway itself that provides spaces for people to sit and congregate, it acknowledges the sort of temporary condition where the greenway is not improved to the south. Sorry, this view is from the northeast, you can see the existing building there. A lot of this stuff was developed over several meetings with the neighborhood and through several meetings with the design commission. We feel we are providing a huge public amenity, if you compare this to any other project in the pearl, sitting on 200 by 200 block, there are generally zero public amenities, there really has been a lot that's been provided here, that's intended for that public benefit. In order to justify some of the things we have requested. Another thing, in terms of the site plan that's really key, you can see someone mentioned earlier, this building and naito parkway are at a shift from the pearl district grid of a little over 40 degrees, what that means is -- lost my page, that means is we actually used this I-shaped tower, which the design commission gave us a lot of trouble about, why is it an I and the reason is it minimizes the sight lines and so you can see there if you look at the length, top to bottom in this plan, that's the length extension and the reason we requested that specific length is it doesn't change the vantage point from fields park. So we were able to put some of that volume in the building

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in a place that takes into consideration the very viewpoint people are so concerned about. So then I guess I would offer this one to show the context, what you can see here, this is a building in and of the pearl. The tower element itself, in terms of the question of context, this tower belongs in the pearl, most of the towers in the pearl are substantially larger than this in terms of stepping down to the river, you can see through our process with the design commission, it's substantially steps down to the river in terms of its context with adjacent buildings, it has the same relationship to the greenway and to the river as the existing adjacent facilities.

Wheeler: Can you stop the clock for a second. There's been a lot of discussion about this notion of context, what does it mean to you as an architect, as you're looking at this building, I heard what you said in terms of size of the other building, what does it mean?

Wybenga: It is -- when these things -- when these questions come up, I always remember what my dad said to me, when he told me not to go into architecture school, which is that I was leaving engineering where facts were quantifiable and to a field where everybody has an opinion, it's true, this is all highly subjective. So what I would say in terms of context is not the same as what someone else would say. What we have tried to do here is balance context in terms of both the fact that this is sitting in the largest, most highly developed residential neighborhood in the city, and it sits on the waterfront so the scale cues and the material cues of this podium element are taken directly from the flour mill at centennial mill where taken from Albers mill, that's the scale, the repetition of these masonry elements that ties into -- if you picture Albers mill you picture the flour building at centennial mill, there's a regularity and repetition and we have tried to nest those two things together and acknowledge the context of this building is certainly of two or many more minds and we have tried to meld both the modernity of the towers in the pearl together with something that is contextual and texture, scale and placement.

Wheeler: Thank you.

Wybenga: So I'll keep going through here. Just in general, you can look at these things in your packet, these are all the public amenity we're talk about this was designed in conversation with the design commission. We really wanted something more, that was the same we heard from the pdna, ok this is good we want something more, we want something extra. We got to in addition to the 60-foot wide plaza space was the idea of kind of creating this head condition at the intersection of the greenway and this new plaza. It's space where people can come, congregate, use it as an amphitheater, a spot for a lecture, just to sit and enjoy the view and the river and the bridge of course.

Wheeler: Can I ask you a question about this public plaza, whose responsibility is the management of this plaza?

Wybenga: Unfortunately --

Gilligan: That's a developer, it's still our property.

Wheeler: You're responsible for keeping it clean, security and all that.

Gilligan: We have been doing it on that site for a long time now since we found it.

Wheeler: Very good thank you.

Wybenga: I laughed because that's been a point of contention between Patrick and me. The more evolved the public spaces get, the more his team has to manage.

Wheeler: Thank you.

Wybenga: Okay. I'll continue on here. This view actually shows what is currently the terminus of a greenway, so this an area where the greenway expands by another 15, 16 feet over the required amount, an idea we are trying to create something here that at the current time is a terminus of that greenway from north to south, but it's something that kind of becomes a knuckle or joint for the future development. It becomes a pause point in the future, these are sort of just urban design concepts. The other thing that has come out of

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our conversations with the pdna and with the design commission is, we have gone and incorporated some units, so, direct eyes on the greenway, so, we're thinking these are short stage units at the outside of the project, for very practical reasons of being the end of the run, that we had mechanical space there. That wasn't okay with the pdna, it probably wasn't the best decision from an urban design perspective, so, we have gone around in detail to create something that's a little more energetics. One thing we haven't talked much about is the -- sorry, what's shown here, in the center of this image, we do think it's important there are places for people to get on the river, we think it's important that there are different types of activities on the river, so this dining space, which the owner has encouraged us to do to help activate riverfront to get more eyes on the greenway, to get more people to the water is something we incorporated after the first couple of hearings with the city and we think it adds a real vibrancy and real livability component to this project.

Fish: Is there an existing condition of approval that requires the public space to be open to the public 24/7.

Wybenga: Do you know that?

Reynolds: I believe this is just out of the code and so there is no condition of approval that's associated with that, but I believe that was the intention, because it is a public plaza, it will not be in any way confined from the public, that it be open at all times.

Fish: We have clarified that in prior decisions in two instances where we have had that representation made in the record and if necessary made it as a condition of approval. It's your understanding that the code requires it be open 24/7?

Reynolds: I am not -- I don't want to speak to something and be incorrect, I don't actually know the answer to that, I believe that is our intention, so if that was something that isn't in the code that you guys do want clarified, we would be, I believe, able to accept a condition.

Gilligan: I believe the current -- we have an easement on the greenway right now, the other part of the property, and it's important and again across other points on the greenway, that's I think 5:00 a.m. to 10:00 p.m., the hours of use. That's just signage we have seen in that area so far.

Reynolds: I believe that's specific to the greenway versus this public plaza area, but yeah.

Fish: The public plaza is a public amenity and the land is used to calculate the extra height, so I think it's a relevant question about whether there are any restrictions placed on the public access to that site?

Reynolds: Yes, we would be happy to look into that and get back to you for your question, I believe we would be acceptable condition of that nature would be acceptable if it's not already required by the code. So either way, we are happy to provide that as a 24 hour amenity if needed.

Wheeler: Thank you.

Wybenga: Excellent. So I will try and leave a little bit of time here we have plenty of things here if you want to talk about context or ask us any more specific questions, we can kind of go through it. These just give a general idea of what's most been evolved in this building over the course of all those meetings with the pdna and all those meetings with the design commission is a focus on the human scale public access pieces and that's hopefully evident through what we have done here and we have spent a lot of time on it, we believe this is a huge amenity for the area and we really believe this is the right building for the right space. So I'll leave it there. If you have any questions on any specific appeal issues I can try and answer that.

Wheeler: I have a couple of questions. So your -- with regard to the width of the greenway walk, it is your contention there is no encroachment?

Wybenga: Absolutely not. I should have addressed that. There's -- I actually understand

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having sat through even the most recent neighborhood meeting to listen in and see what the issues are, I understand why people are really upset, because this has been conveyed that the city has given city property, public property, park property to a developer, which is not the case, there's a 25-foot greenway, there's still a 25-foot greenway, we don't encroach on that at all, in fact, it's slightly bigger in numerous places, and the width constriction issue that we dealt with most substantially with the neighborhood planning transportation committee was the question of how wide is the actual walking surface. So the -- one of the appellants mentioned the parks district, well the parks district have requirements for this space which include landscape standards, so, it's not acceptable to build a 25-foot wide sidewalk, besides that fact that it's not particularly appealing, so we really tried to work as we have with the mass of the building to kind of control the movement of people and create a space that's beautiful and appealing whether or not there are people in it or it's completely packed. So that's where that width question. The only valid width question I think comes from is 13 feet too narrow, when we first went to the neighborhood, we had 10-foot section which we thought -- this is not the greenway, it's the paved portion of the greenway, it's always been 25 feet. Whether we have landscaped areas and its next down, what's the right number and we settled on 13, which is wider than most of what exists there today.

Wheeler: So somebody gave a very reasoned argument around the exaggeration of the buildable site, and I think it was proffered that you have exaggerated by 70 percent the buildable. what is your reaction to that?

Wybenga: That's actually -- I presume what they're saying is germane to what Allison addressed earlier, which is that the contention is that the site area -- to get to that number, I'm not sure how they get to that number, but it means you have to take any part of the site that the public can use and subtract it out of the owned area of the site. So the entire public amenity of that plaza would be taken out, the greenway would be taken out, any other property that doesn't have a building on it, I think the contention is that's not buildable area and doesn't count towards the site. I think that's what we understand the case they're making, but that certainly isn't the way this has been interpreted on any other project we have been a part of.

Wheeler: Very good.

Fish: Mayor can I jump in for a second.

Wheeler: Please commissioner Fish.

Fish: I understand that one of the three bases for your bonus height is eco roof

Wybenga: Yes.

Fish: and is it -- my assumption is that the standard for the eco roof is not the current standard that the commission Eudaly has put into 2035, but the preexisting standard?

Wybenga: I would say yes.

Fish: We have substantially tightened the requirement to expand the footprint, and I assume you're using the old standard for the eco roof?

Reynolds: Yeah, that's correct. Based on code that's applicable to this project, so it would be the 2016 code.

Fish: I'm looking at page 21 of this beautiful handout you gave us and can you tell me off of that picture, what actually constitutes the green roof and what is the kind of large rectangular space on the short portion of the building?

Wybenga: Sure. I should say our team member who did these beautiful images is sitting here and probably panicking because these would fall into the artist's rendition more than precise drawings, they are based on our models, but their actually quite closed, what's shown there very diagrammatically the green space on top of that lowest podium, everything shown in green, that's a breakdown, some of that actually fits the definition, it's

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all planted, but some of it doesn't fit the definition of green roof per the code. The tan colored space is a terrace. So there's actually another terrace that kind of wraps around -- you can see a little bit of it here on the shoulder, on the southeast corner, again, there's kind of split between occupied terrace and green roof. What we elected to do with the green roof is to not put it in places where it wouldn't grow or wouldn't be seen like on the -- in the mechanical well at the top of the building. So we have tried to mix that in with landscaping and with spaces to be occupied.

Fish: Thank you.

Wheeler: Commissioner Saltzman anything else before we move to the next group?

Saltzman: I'm just curious is this building going to meet a particular lead standard?

Wybenga: There's no lead certification plan for this building.

Reynolds: Commissioner Fish I just did a quick search of the code and I don't believe the plaza has any sort of requirement regarding 24-hour access, so if that is a condition of approval you would like to add to this, we would be happy to craft one of those for you if that would be helpful.

Fish: Get to that later, thank you.

Wheeler: I try to keep all of my comments germane to the hearing and to the parameters of the hearing, so, I will say this, I hope you will reconsider that lead standard. If for no other reason than I think that's what the market is looking for, but I realize that's not necessarily germane to this particular hearing. Rebuttal? No, wait, opponents of the appeal, three minutes each. How many people do we have signed up.

Moore-Love: Five people.

Wheeler: You can cool your heels for a little bit and think about your desire for lead certification.

Wheeler: Three minutes.

Madeline Kovacs: Good afternoon, Mr. mayor, commissioners, My name is madeleine Kovacs, I'm testifying today for the members of Portland for everyone in support of the Fremont apartments project in opposition to the appeal request by the pearl district na. I begin by asking council to please keep in your thoughts during these proceedings all of the Portlanders desperately seeking housing, are currently working or don't have the time or resources to come and testify before you today.

Wheeler: Excuse me, folks, you heard the rules. Right up front and I made it very clear that you are going to hear opinions that were different than your own, and you heard people listening to your position respectfully. You need to do the same. Otherwise, you will be asked to leave. Please continue.

Kovacs: The developer on the Fremont apartments actively engaged with the neighborhood, adopting plans allowed outright under Portland code to address local concerns and on due diligence. Plans were amended multiple times to accommodate concerns. Current condo residents fighting apartment tower similar to the ones they live and that were allowed at the time they move in is ironic. We must also be clear about what is under consideration today and what is not. View corridors were established by an arduous long-range planning process and the views discussed today in relation to this project were not among them. I would be remiss if we did not note that Portland for everyone would support the project more enthusiastically they opted not to include parking and had instead opted in voluntarily to the cities new inclusionary housing program. That said we need more housing of all stripes and projects that meet land use and design requirements, provide enhanced public benefits must be allowed to be built. This is also a key point for those concerned with protecting Portland's most vulnerable residents in other places from further displacement. As the white house said a few years ago in his housing development tool kit, when new housing development is limited regionwide and particularly

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in neighborhoods of political capital to implement stricter local barriers, the new housing that does get built tends to disproportionately concentrate in low-income of color causing displacement and concerns of gentrification in those neighborhoods. Portland city council must be steadfast in demonstrating leadership and making decisions that will support our city's stated vision for the future. We must consider this and all projects cumulatively and in light of our stated long range planning goals. The climate action plan, the comprehensive plan, equity and the anti-displacement goals. We must ensure that the continued buildout of Portland's urban core while enabling walking, biking and the use of transit, a proposal to build hundreds of units in our downtown core on an empty parking lot accomplishes our public policy goals for public health, climate mitigation and affordability. Portland is in a declared housing crisis, but we did not get here overnight. Part of this solution is strengthening tenants rights, part of the solution is securing more funding for affordable housing and part of this solution is making sure that we do not continue to chronically under build housing, especially in our best connected places if we are serious about addressing this issue, as a city, we must choose to live out our values and prioritize housing our full community over the objection of a few individuals on every project.

Wheeler: Good afternoon.

Alan Kessler: My name is Alan Kessler, I'm here to support the project. This is an extraordinary waste of time, it's an extraordinary waste of money. Council for appellant is very good at what she does, she's not cheap. The architects here are very good at what they do, they're not cheap and to bring them through four rounds of design review, four voluntary meetings with the neighborhood and then for council to -- you required to entertain understand, but if you were to override the will of design committee, that's added expense that any developer coming to this city has to expect will happen to them. So then the calculation on should we build more needed housing in Portland includes this expected cost of hiring attorneys, hiring architects to come to meeting after meeting after meeting only to be told by council no, go back to design review and negotiate this some more. This is a process committed over and over again throughout the country in every neighborhood, every community, no neighbor wants more people near them, but this has led to the development patterns we have. This is why we have a need for affirmatively affordable fair housing laws and other things that remediate the economic and ability segregation that's been part of the makeup of way American cities are built. I would note that each and every one of these units is likely to be type b accessible, 2% of them will probably be required to be type a accessible. This is 175 accessible units that some neighbors who don't want the view out of their condo change are coming to they hope to defeat it. To make sure these units don't get built. We have an obligation under federal law and a moral obligation to have more housing for people with disabilities, we have an obligation, a moral obligation to create more housing, period, because that's the only way we are going to get through this affordable crisis. I would ask council to not just deny the appeal, but I would ask you to send a message to neighborhood associations who would leverage only resources and in their position within the coalition to try to stop needed housing and try to stop accessible housing in the future. I think you should deny this outright and extremely clear terms and make it clear in the future, neighborhoods can't abuse this process to stop our city from developing the buildings that it needs. Thank you.

Wheeler: Thank you, good afternoon.

Patricia Gardner: Hi my name is Patricia Gardner, I was fortunate to live in the pearl district since 1993 and just recently moved out, I have to say I'm a little surprised to be here because I haven't even finished unpacking, with that said, I need to clarify some history and legacy. A lot of the appellants talked about precedent, and I have some bad news for them, the precedent they're talking about was planned, it's exactly -- this building

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is exactly what was planned. It is what is in code, and the reason I can say that, I was the planning chair who went through the north pearl plan and I sat there and I advocated for this, our model was not san Francisco, which sprawls forever, our model was not Chicago, which sprawls forever, our model was Vancouver, bluntly, and this was the place where the river district, via the pearl district was going to reach out and grab the river, and the reason the setback is 25 feet is because we wanted buildings there and wanted urban buildings there and that's what the code says, because that's what we planned on doing and that was passed in the mid-2000s. The design guidelines were updated as part of that process, so what you see in front of you is exactly what the plan was. The pearl was not supposed to stop at the fields park, there was supposed to be a bridge that blocked your view of everything in the fields park that brought you to the river. This is in the Peter Walker master plan, this is in every plan that's been done in the pearl. You were supposed to go to the river and look at the river, you weren't supposed to stop in the fields park, you were supposed to go to the river and you were supposed to go to restaurants and it wasn't supposed to be privatized. It was supposed to be a place that all Portlanders could use and so, they're 100% correct, you are creating precedent and you are creating precedent that was planned, and if you don't do this, you're going to get a lot of people going I don't want two-story buildings or three-story buildings, why don't we make it a park, and I'm sure commissioner Fritz would have a problem when people are asking for park money for what we want. So I think that you're right, it's a turning point, do you support the plans and the zoning codes that have been done over the past 25 years? Because this is what you got because this is where it was headed to the whole time. Thank you.

Fish: Can I ask you a question because you've waited a long time and haven't been able to unpack. Thank you for your letter. Let's concede everything you say in your letter. Just speaking for this member of this body, which by law has to review a decision when it's brought to us, if I agree with everything in your letter, I think you and I would still agree that it is our function as a council to make sure the public is getting a meaningful greenway and that it is accessible, so that's something that I think you would all agree, you'd want us to make sure, we would want to generally make sure it's a building that's well designed, although I don't set myself up as the arbiter of that generally. This council has been extremely flexible on design issues, we have gone against that a couple of times just to incentivize use of new and innovative materials. I think that you would want us as the mayor just did, to probe the question about could this project be greener, we may not have the legal right to push it through this proceeding, but the fact this of this is not a lead, gold or not lead anything is of some concern because our climate action standards amended. We have tightened up our code requirements for eco roofs accordingly and I think you'd want us to be looking at the question of who is being served by the building. I generally subscribe to the idea that more product over time is going to be good because there will be market corrections and we have to have a variety of housing, I am concerned 95% or more of the housing we are building is luxury housing that is out of sync with the ability of the people that both of you have spoken about and that might be covered by federal law and fair housing can afford. I'm a little chagrined that there has been this huge rush to put permits in to get around it. There's a huge missed opportunity and there was no way around it. We couldn't make it retroactive, but the 15 to 20,000 units will not be affordable under our new law because of it. I just want to say, in respect, I think patty Gardner's come before us many times, she has lots of important things to say, but even if I agree with everything in your letter, I still think we have a role to play in making sure it's good design, it's as green as possible, that the public amenities are truly public and accessible and to push a little bit on affordability because this, to my knowledge is not an affordable development. It's not required to be, but I think it is our role to flag that issue from time to

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time.

Gardner: A couple of thoughts, one, I would ask the developer could they meet lead standard, one thing that you should know about lead, is it's wicked expensive.

Fish: For an alternative I know there's other.

Gardner: Its expensive and so the fact that they have a green roof, the fact that they have bicycle parking. I bet you if they did the math, went through a little check sheet that lead I wouldn't be surprised if this building needs it. That 's one question I would ask the developer, because when you're doing the development, it's expensive and that \$200,000 can -- that that's not a small sum and that's what it basically costs, the other thing I would say is one interesting side effect, I had to live in an apartment building, I'll tell you a short story, I had to live in an apartment for the lift three years, and what I found is that because of all the housing coming on board, there are a lot -- people aren't raising their rents, they're lowering their rents, people are giving months and months of rent away. The one bonus that I don't know if you're aware of is by all the housing coming online, I think you'll find rents fall and so it may not meet low income, but it could potentially meet work force, and that is something that we are also woefully under -- we don't have enough work force housing and we don't have enough work force housing in the downtown corridor. If you were to do a survey of the apartments in the pearl, I think it would be very interesting to see where rents have gone over the last year. So that's something to keep in mind from a context point of view.

Wheeler: Thank you for the clarification on lead standards since I opened that can of worms, you are correct, for me it's really about the outcomes, not so much the nice medallion, although it is pretty. It really is about the outcomes and as commissioner Fish correctly pointed out, we have aggressive climate action standards for this city, and that means everybody needs to do their part and we have an opportunity to go at least a portion of the way towards our goals. So really is about outcomes and thank you for reminding us on that.

Gardner: Thank you.

Wheeler: Great, thank you and was there -- hello, sue, how are you. Is there anybody else signed up?

Parsons: Two more, please.

Fish: After eight hours of council, Karla gets a break.

Kurt Schultz: Want me to go first.

Wheeler: Yes, sir.

Schultz: I'm Kurt Schultz I am the president of Sera architects and our firm values sustainability and good urban planning and we have been in business in Portland for nearly 50 years now. I am here in support of this project because I think it does embody those values that I just discussed, but I'm also here to support the design commission and the zoning code as it is written. I go before the design commission and the design review body quite often, and staff and the design commission takes the guidelines and the rules and the zoning code and the standards very, very seriously, even though they're not paid, they look at these very closely, and I had the pleasure to actually be able to sit through some of the these design commissions on this project, I have no involvement in this project, I was there for other hearings, but I saw how diligently they looked at this project to make sure it fit with the rules and fit with the standards and as patty said, these standards have been in place for over 20, 25 years, this just happens to be the first time this has happened on the north side of naito, but the way -- I've actually looked at it myself, the way I -- I believe it does follow the rules, the standards and the guidelines of this area and I think what's important, it also to think about, the way that the guidelines are changing with the 2035 plan, with the new 2035 plan central city plan a lot of the things we are discussing

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today are going away, the height is going to be increased from 175 to 250 feet and the 45-degree angled setback on the greenway is going away and actually some of the width and bulk guidelines are going away. Essentially the rules that you guys are adopting and the planning commission is adopting is actually increasing the amount of density you can do on these sites, not decreasing it and people are -- developers and the community, they're very interested in this and counting on this. When you talk about a precedent, if you approve the appellants here, what that's doing, is it's going to really change how people are looking at all these properties. There's a lot of developers looking at developing those properties with significant portion of ih now. They're one of the few areas I know where we have been talking to developers who are very interested in building ih units along that waterfront. Here, here. In conjunction with larger towers and ih projects. So if you agree to this appeal, that's going to throw all the rules that we are playing with now out the window. We're not -- developers are not going to know what the rules are anymore. So essentially you will not only lose housing, you are going to be losing probably some significant chunks of ih units that I believe are actually going to be happening in this portion of the district. So I would urge you to uphold the good work of the design commission.

Wheeler: Thank you.

Schultz: And follow the rules that have been adopted.

Wheeler: Thank you.

Schultz: Thank you for your time.

Wheeler: Good afternoon, sir.

Neilson Abeel: My name is Neilson Abeel, I am a 26-year resident in the pearl district. I'm a coauthor -- cofounder of the pearl district neighborhood association, and a co-author of the bylaws of the pearl district neighborhood association. I'm here today to oppose the appeal on the way it was brought to the city. One of the key elements of the bylaws of the pearl district neighborhood association when we founded it in 1992 was that we gave the planning committee executive power and the reason for this was we created a committee that has been for 25 years run by professionals, and architects, urban planners, geographers, retired new York real estate consultants, and the requirements to be on that committee, if you wanted to get on, of sitting in on meetings, taking a seminar, learning something about urban planning. Over the years, the planning committee of the pearl district has tweaked plans, dealt with developers, done all kinds of things, and to -- work with the design commission and the planning commission and this appeal overrode a vote on this project by the planning committee. And I am here because I am concerned about the future of the neighborhood association and its planning committee to engage with architects and developers. And when the architect for this project said he met with the pdna, he was meeting with the planning committee, he was not meeting with the pearl board and the pearl board takes anybody who wants to sign up for it and get elected to it. And they're overriding a professional committee that works with design and planning. And so therefore, I think it's a very poor precedent for a neighborhood association that for 25 years has dealt with the design overlay of our community. And has built what we now see to be the motion successful urban renewal district in the country.

Wheeler: Thank you. Thanks, gentlemen. Are there any more opponents of the appeal? Very good. So the appellant, if they so choose, have five minutes for rebuttal. Do we still have commission Saltzman's line?

Saltzman: Yes.

Wheeler: Okay good just checking, I heard a click Dan and I was just worried we might of lost you there.

Jeff Kleinman: Jeff Kleinman, attorney for pearl district neighborhood association, thanks for the opportunity to rebut. I want to be clear on a few things and first of all, dealing with

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this case and trying to work up the appeal, I wound up having to deal with my own confusion relating to how you tie in the far bonuses to the modifications, et cetera, and I want to clarify that because I think I have figured it out. To the extent that there is a qualification for bonuses, and the mayor made reference to that, you still are limited as the developer to the maximum height and all the other requirements unless you get modifications. So the maximum height here without modifications whether you get 2, 10 or a million bonuses is 100 feet, okay. This proposal is continuously described as 175 feet, actually it's 185 feet with the parapet for the mechanicals, so its 18 1/2 story building right on the river. To be approved for modifications, you have to comply -- any modifications with 33.825.040, a and b both. These require that the resulting development will better meet the application design guidelines and we have given you a zillion reasons why they do not and b, on balance, the proposal would be consistent with the purpose of the standard for which a modification is requested. And the purpose of the height and other standards is to protect the neighborhood from overbuilding, especially on that side of the barrier formed by front avenue and the railroad and to protect the greenway and such factors. Not all the witnesses were lawyers, thank goodness for all of us, but and I don't mean this defensively, mayor, but most of the testimony went to the criteria that we have identified in our written materials, even though folks didn't identify the criteria. And I would certainly refer the members of the council to the proposed findings that we have drafted and look in particular on page 7, this is very lengthy, at the criteria of the north pearl subarea height opportunity area and the ones we have then highlighted in our discussion as not being met. Facilitate visual and physical access to and along the riverfront for all members of the public. Create an expanded opportunities for views of the river as viewed from naito parkway and front avenue, it is not happening, it is the opposite that is proposed here. Ensure that bonus height granted to sites adjacent to the Fremont bridge does not significantly affect views, it certainly does. And this property is in the same ownership as the property next to it, which is to be developed next, directly adjacent to the bridge. I treat them as both adjacent to the bridge, they're in common ownership. So --

Fish: Can I ask you a question, this comes up in a number of our land use proceedings where -- where there's a potential worst outcome from the applicant's point of view if the council grants the relief in this development comes back under a different set of rules, so what is your understanding of what would be allowed under the current proposals under consideration by the council for central city 2035?

Kleinman: I'm not sure I understand the two components of the question. Vis a vie what will change in 2035?

Fish: Under central city 2035, where we are looking to up zone, throughout the city, what is your understanding for this parcel of what would happen if, let's say, we granted the appeal and the developer came back after central city 2035, had been adopted, what would be as of right under the current proposal the council is considering?

Kleinman: I am not absolutely certain as to most elements, but one element would be a 50-foot greenway setback.

Fish: So, 50 foot greenway setback.

Kleinman: Instead of what there is proposed here.

Fish: But it is quite likely that the height would go up?

Kleinman: If that's a correct understanding of what is allowed, but in the mean time we have the laws that we have got, and these folks are not in compliance, I would add the applicant's attorney stated that the additional height above 150 feet -- I'm sorry, above 100 feet is a modification. So -- these modifications in no way better comply with the criteria. The applicant, in an e-mail Which I have seen, threatened, the board of the neighborhood association, saying if you go ahead and appeal, we can just go ahead and build this ten-

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story building that looks like this. So why not go ahead and apply for something that's allowed and subject it to design review? The association is prepared to live with that and by the same token, going back to your question, commissioner, if there is a reapplication, there's no need to comply with exclusionary zoning requirements for affordable housing, if the height is higher and that's the law, that's going to be the law. So right now we are dealing with the law as it is, and we'll take our chances with changes which take effect later.

Fish: Let's be clear and I don't know the answer to this, I don't have perfect recall of what's under consideration for central city 2035, but a different application may result in something that from the point of view of your client is even worse?

Kleinman: That is hypothetically correct. It could be.

Fish: It might be more than hypothetically. So that's something to consider, reminds me, mayor, of the conversation we had recently where you gently pointed out to neighborhoods in southwest Portland that it isn't a question of whether there's going to be development, there will, there is a question of whether it will be someone from the community working with the neighbors or whether it's an out of town developer who comes in and operates in a different context, I just -- I want to be mindful of the fact that you might -- from your point of view, win a battle, but lose the war, ever under 2035 a building as a right is less, is even from your point of view is less contextual, less beneficial, has fewer public benefits?

Kleinman: I think that is possible. I would also say, because I'm not directly affected person, I'm the lawyer, that my clients are sophisticated, and I would imagine have taken this into account. So -- and they are also not opposed to rather intense development of the site so long as it is compliant and this is simply not, and if you look at the precedents that they have argued, waterfront pearl as a basis for a modification and the Bridgetown lofts, as a basis for another, those are terrifically coherent in context projects, and this is not. This is just a behemoth and a monolith by comparison. So commissioner, I don't -- I hope I'm not being rude, and I'm not blowing off in any way the argument that you've presented, but I really do believe that the board of the neighborhood association has taken that into account or they would not have gotten so heavily engaged.

Fish: Sir, after ten years of doing this job, it would take a lot more than that for me to accuse you of being rude. It would probably have to be at the death threat category which I've had some experience with.

Kleinman: I'm an active member of the bar.

Fish: I appreciate your sensitivity.

Kleinman: I don't plan on retiring either, probably not going to happen. Anyway, what will happen, if -- in the subsequent applications that are filed under the current zoning in effect and the current criteria, once this sets the precedent, is the building of a wall, not on the Mexican border, but on the Willamette, here and this will blow out the existing context of the riverfront in that area and the notion of stepping down to the Willamette. In terms of the process -- let me make me make a request before my time ticks out. The applicant's attorney has requested an open record, I believe a couple of days to supply some additional materials, and we have a right to respond to what is submitted. So I in turn would ask for the record to be held open by at least an equal number of weekdays, so that we can file a response that due process and statutes entitle us to.

Wheeler: Very well, and I will -- we will take that under consideration. Thank you. Commissioner Saltzman, any questions.

Saltzman: No questions.

Wheeler: Very good, commissioner Eudaly you wanted to see staff again.

Eudaly: Yes. Ben Nielsen, please come back. So I have several questions for you, but I want to start by asking if there's any way that you could elaborate on the dissenting

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opinion of the chair, Julie Livingston, because all we have are the specific areas of concern, but no real explanation or context for those concerns?

Ben Nielsen, Bureau of Development Services: So I think this gets at commissioner Fish's question from earlier. There is a small written section in the final findings in the conclusion section, that represents her dissenting opinion. That's the extent of it. It's really touching on just a couple of points as I recall.

Eudaly: Okay. All right. So -- I just need to get clarity on some of the modification requests.

Nielsen: Sure.

Eudaly: Why are we allowing extra height to accommodate mechanical equipment, why aren't we requiring the developer to include that within the 175 feet?

Nielsen: That's a good question. This is a modification that actually comes up quite a bit. Especially in the central city. The modification for the mechanical screen and the mechanical equipment falls under the base zone standard, the ex zone, that's in chapter 33.140 of the zoning code, which is a different standard than what allows the building to be built up to 175 feet. The building can't go any higher than that. Based on code and chapter 33.510, but the base zone allows for exceptions to the height standard for certain amounts of mechanical equipment, stairwells, elevator overruns, things like that. That's what category this mechanical screen falls into. So the commission often hears modification requests for this and often grants them, if the mechanical screen or mechanical equipment in this case are found to be coherently integrated into the overall building design.

Eudaly: Okay. Thank you, I'm pretty impressed you have all those numbers in your head.

Nielsen: I deal with it a lot.

Eudaly: Similarly, why are we allowing this length of the facades to exceed -- what is it?

Nielsen: 200 feet.

Eudaly: Well, what I'm looking at facades above 100 feet to extend -- to exceed 120 feet in length, and I think I heard that those codes will be changing?

Nielsen: I'm not terribly familiar with the future code, but under current code, floor plates and facade lengths above 100 feet in height are limited. However, the same standard allows the option for modification to be considered, to extend building lengths from 120 feet up to 150 feet. So they can't go beyond 150. In this case, I believe one is around 125, 128 and another is 140 something.

Eudaly: Okay. The shadow standard?

Nielsen: Yes.

Eudaly: Why are we giving an exception to that?

Nielsen: The commission found that since the standard would essentially be met at 1:00 p.m. as opposed to noon, that they found that was basically meeting the purpose of this standard and for all the other reasons.

Eudaly: I think you may that have said that.

Nielsen: I did. A long time ago.

Eudaly: I apologize. The setback issue, I'm not as concerned with, as I was originally, because I understand it's another thing that's going to go away, but can you give the rationale on that, not pertaining to the easement, but pertaining to the height over 35 feet in that little section of the building that is encroaching in that area?

Nielsen: I think that rests on a few reasons, actually if I could get my presentation back up, it might be easier to visually describe it. Let's see. Okay.

Eudaly: At the same time, you could address item 5e, which is another exception to building dimension, just wanting to understand the rationale behind all these modifications?

Nielsen: So those do fall under the same standard. So for the modification to allow the

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building to extend into this angled setback, basically rested on -- it says here guidelines a2, enhanced Portland themes, a5 enhance and embellish and identify areas and a5-1-1 reinforce the identity of the pearl district and that's basically talking about providing better views of the Fremont bridge, again, this kind of goes back to the main argument that is being made on both sides. Allowing massing and floor area to be placed into the tower component of the building as opposed to the lower story areas, which would bring it closer to the river or could impact views from the perspective of the Fields park towards the Fremont bridge. So it's for a combination of reasons that the commission found that this was acceptable. The other reason is that it allows planted rooftop area on the lower roofs to be closer to the greenway. So that's I think a lesser reason. As for the 230-foot 9 inches building length as opposed to the required 200 feet, again, the commission was considering guidelines that talk about linking the river to the community, emphasizing Portland themes, the identity of the waterfront, and making the plaza and park an open space successful. Going from memory of what the more detailed findings say, this modification was basically based on having a narrower building in the direction parallel to the river, so in that direction, along -- looking along northwest naito parkway, the building is only about 180 feet in width and the 200-foot dimension applies in that direction as well. So it was a tradeoff in the commission's mind to allow a longer building, perpendicular, which opens up a wider space towards the river.

Eudaly: Ok my last question pertaining to modifications might be a parks issue, but I am curious and again you may have addressed this many hours ago, about the kind of lowering of the landscaping requirements and particular trees, why are we doing that?

Nielsen: Are you speaking specifically to modification, I think it was.

Eudaly: 6 and 7.

Nielsen: Oh, 6 wasn't even addressed in the appeal, so I didn't talk about it at all.

Eudaly: Ok 7.

Nielsen: I can if you want.

Eudaly: That's all right.

Nielsen: 7 was limited to a very tiny area adjacent to the driveway between the driveway and the south property line. The commission felt that the requested modification was sufficient here, there was no need to pull the drive way back an extra 3 feet to get a few trees here when another building could conceivably come in next year or next month, building up to the property line there as well on the adjacent parcel. Its a more urban condition the way it is.

Eudaly: My last question is whether or not you can give us any clarity on this issue of calculation of buildable area.

Nielsen: Yes. I actually have a slide prepared for that I didn't show you.

Eudaly: Look at you.

Nielsen: Due to time constraints. I think it was this one. Of course I don't have my notes. But this diagram -- the areas shaded in red are areas that the appellant have contended don't apply towards the site area or towards calculating allowable development area. Not shaded is the Willamette river, which they also added today, was not in the original appeal documents. I want to address the river portion because I don't particularly have expertise in that area. That we have a separate land use case under way to specifically divide this site up from the rest of the larger site. That hasn't concluded yet, but we are using that site definition as a basis for the land use hearing today. For the greenway setback that's shown in the red color there and also for the plaza. Those are not right-of-way dedications that have been asserted by several people today. The greenway setback is specifically an easement, and the public plaza, I don't even recall if that's an easement or not. The code thinks it is accessible to the public and with signs posted telling them such. So they remain

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part of the site which means they remain potentially developable, the building is not precluded from going in either of those areas, so it is allowed to be counted towards development area and that is a very common thing when there are public spaces proposed.

Eudaly: Thank you.

Nielsen: Sure.

Wheeler: Any further questions commissioner Saltzman of staff?

Saltzman: No.

Wheeler: Very good. Thank you very much. At this point I will go back to legal counsel and ask if you could summarize our options at this particular point. Noting that we had a request from both parties to be able to review additional documents if documents are submitted on the part of the developer. They wanted at least a couple of days and then the appellant wanted a couple of days to review those documents should the council choose to keep the record open.

Linly Rees, Deputy City Attorney: So whether or not you keep the record open for additional evidence is at council's discretion. If you are going to do so, I would suggest that you have a certain number of days. It's traditionally seven days if the parties are fine with two or three, it's really up to you. And then there would be an -- so all parties -- the record would be open for all party for a certain number of days and then a second period of time that would be essentially rebuttal time. I would have it be about the same amount of time which people would not submit evidence but could respond to the evidence before. It is often traditional to have the appellant have or the applicant to have the final seven days based on some statutory language we have in the past interpreted not to apply so that's really -- I would say at the applicants if they make a big deal of it then they would want the last word, we can decide to allow them so we don't have an appeal issue on that.

Wheeler: In that case, so I understand that would be keeping the written record open, is that correct? Or would that also create an opportunity for a future hearing?

Rees: So we are talking -- if we are talking about keeping the record open, that's one option. The other option is simply to continue the hearing and let people come in and testify in evidence again. You could do that. You could also decide you don't want any more evidence in the record at all. You could close the record at this point and make a tentative decision. Deliberate and make a tentative decision, those are the options on the table.

Wheeler: One moment commissioner Fish. So, option number two, if we went that route, the testimony would be solely on new evidence for provided since this hearing, is that correct?

Rees: You could limit it that way. It would be more typical to decide either to continue it and have everything -- all of the new issues dealt with there or have the record held open.

Wheeler: Very good, commissioner Fish.

Fish: So mayor, I want to acknowledge that we have been at it since 10:00 this morning and is that long and very thoughtful and informative hearing. The applicant has proposed to put in a submission on this legal question of how you calculate the footprint for the bonus and we would have to then give some additional time to the appellant to respond to that I see the applicant shaking her head the lawyer, about needing additional reply to that so if this was the council's choice, I think we could get agreement on a seven week period for a submission, a seven week response and I will speak for myself. There's a couple of issues that I'd like to review in the record before I make my decision, I think I know where I'm headed on this one, but I would benefit from a little time and frankly given

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that we've been going straight all day, I just think my brain would benefit from a little refresh and I know we don't often do this, but one proposal that I would ask us to consider to see if it's acceptable to the council is that we keep the record open for 14 days as has been suggested by council. Close the record and then come back solely for the purpose of deliberating. So no more testimony, we would come back for the purpose of deliberating on a time certain and we are not -- according to the attorney, we are not under a strict deadline in terms of the clock so we would have the opportunity set a time that works for us and the parties without that clock -- you know the 100 and whatever day clock staring us in the face.

Wheeler: So you are proposal, if I could restate it so I have clarity, is the applicant would have the time to submit.

Fish: Seven day.

Wheeler: Seven days in which to submit their testimony. The appellant would have seven days to review that and then we would come back at a time certain sometime in 14-ish days.

Fish: Or more.

Wheeler: Or more.

Fish: On a time certain to deliberate.

Wheeler: To deliberate.

Fish: Solely so the record would close at that point and we come back.

Wheeler: So we would take no additional public testimony at that time it would simply be the appellant or the applicant and the appellant, correct?

Rees: That would be fine. I will make one suggestion. Is it clear there is an issue oversight area. I'm not sure why you wouldn't have that first record period to be available to both parties to submit any evidence they wish to during that seven days and then the second seven days is for either party to respond to that evidence. So it's mutual.

Eudaly: Sounds good.

Fish: Okay. Either party can submit evidence within the first seven days and either party can respond to that evidence in the second seven days, is that what you are suggesting?

Rees: Yes, I would be interested in knowing either of the attorneys have any option to that?

Kleinman: Jeff Kleinman, no objection.

Reynolds: Allison Reynolds, we don't have an objection but we don't really need seven days, so if you want a shorter period that would be fine with us.

Fish: We will have I think a challenge finding a time certain, but we are not under the clock.

Wheeler: How do we look as far as time certain?

Moore-Love: What date are we looking at?

Wheeler: Let's assume 14 days out.

Moore-Love: March 7th. The morning of march -- how much time?

Fish: An hour?

Moore-Love: An hour.

Fish: Just we put things down for 15 minutes and they go two hours. So just an hour but we won't need a whole hour.

Moore-Love: Thursday March 8th at 2:00 is available but commissioner Saltzman is absent.

Rees: Do we have commissioner Fritz also?

Moore-Love: She is back. She is back.

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Rees: When we will have all four who've been participating so far?

Moore-Love: For an hour?

Fish: Or half an hour?

Moore-Love: We could squeeze you on the morning of the 7th let's say at 10:15.

Wheeler: We have all of the commissioners there?

Fish: Go one more week and what do we get? Any more?

Moore-Love: Not really -- it would be either 4:00 or 10:30 on the 14th.

Fish: We will get within 14 days materials we will want to review them. So with that regard to time, what is the next time that seems to work for everybody?

Moore-Love: The very next one would be the 7th, March 7th. In the morning.

Wheeler: That's at the 10:15 slot.

Moore-Love: Right.

Wheeler: Does that work for legal counsel on both sides? I see heads nod.

Rees: I would suggest then that materials be due the 6th because if they are due say 5:00 p.m. the 7th, that doesn't help you very much.

Wheeler: No. I would agree. So the first time line then would be when? The submittal of documents needs to be by what date?

Rees: Let's have it due the 28th by 5:00 p.m. submitted to the council clerk and then any rebuttal to that would be due March 6th at 5:00 p.m. also to the council clerk.

Wheeler: Okay. So in technical language we are continuing the hearing until march 7th, time certain 10:15 a.m. The record is open on both sides until February 28th at 5:00 p.m. The record will close at 5:00 p.m. on March 6th. Correct?

Rees: The record for new evidence closes on the 28th. Rebuttal testimony allowed until March 6th and the rebuttal testimony is pertaining to new evidence submitted by the 28th.

Fish: And mayor, we often at this moment encourage parties in that second submission to be guided by the virtue of brevity.

Rees: And I would also add that given that hearing is on the 7th at 10:30 to the extent the parties can get their materials in well before the 6th that would be helpful to council.

Wheeler: And I want to correct that. It's March 7th at 10:15, is it not?

Moore-Love: Time certain is March 7th and 10:00.

Wheeler: We are all clear. The key dates are February 28 at 5:00 p.m. March 6th at 5:00 p.m. and then the hearing itself is March 7th at 10:15 a.m. Both sides got that? And we will notice this. Very good. We are continued without further adieu we are adjourned. Thank you, everybody.

At 5:40 p.m. council adjourned.