



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF OCTOBER, 2001 AT 9:30 A.M.

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

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

On a Y-5 roll call, the Consent agenda was adopted

<p><b>*1193 TIME CERTAIN: 9:30 AM</b> – Create City of Portland Parks and Recreation Board (Previous Agenda 1190; Ordinance introduced by Commissioner Francesconi; enact City Code Chapter 3.27)</p> <p>(Y-5)</p>	<p><b>Disposition:</b></p> <p><b>176002</b></p>
<p><b>1194</b> Confirm appointment of Chet Orloff, Tom Brown, Jesus Carreon, Leung Holden, Mary Reuble, Tony Palermini, Jim Zehren, Barbara Walker, Joey Pope, Mike Houck, R. Scott Montgomery and Rev. T. Allen Bethel to the Portland Parks Board (Report introduced by Mayor Katz)</p> <p><b>Motion to accept the report:</b> Moved by Commissioner Sten and seconded by Commissioner Hales.</p> <p>(Y-5)</p>	<p><b>CONFIRMED</b></p>
<p><b>S-1195 TIME CERTAIN: 10:00 AM</b> – Amend City Code relating to parades and processions (Previous Agenda 1148; Ordinance introduced by Mayor Katz; Repeal Chapter 16.60, add Chapters 7.22 and 16.65; adopt administrative regulations)</p> <p><b>Motion to accept the substitute:</b> Moved by Commissioner Sten and seconded by Commissioner Hales.</p>	<p><b>SUBSTITUTE        PASSED TO        SECOND READING        OCTOBER 17, 2001        AT 9:30 AM</b></p>
<p><b>CONSENT AGENDA – NO DISCUSSION</b></p> <p><b>Mayor Vera Katz</b></p> <p><b>*1196</b> Create one position in the Office of Planning and Development Review (Ordinance)</p> <p>(Y-5)</p>	

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<p><b>*1197</b> Authorize an Intergovernmental Agreement with Multnomah County for participation in the City Integrated Regional Network Enterprise (Ordinance) (Y-5)</p>	<p align="center"><b>175990</b></p>
<p><b>*1198</b> Extend Legal Services Agreement with Miller &amp; Van Eaton (Ordinance; amend Agreement No. 33776) (Y-5)</p>	<p align="center"><b>175991</b></p>
<p><b>*1199</b> Extend Legal Service Agreement with Beery &amp; Elsner, LLP for outside counsel (Ordinance; amend Contract No. 33069) (Y-5)</p>	<p align="center"><b>175992</b></p>
<p align="center"><b>Commissioner Jim Francesconi</b></p>	
<p><b>*1200</b> Contract with the Trust for Public Land to construct improvements at Two Plum Park in NE Portland (Ordinance) (Y-5)</p>	<p align="center"><b>175993</b></p>
<p align="center"><b>Commissioner Erik Sten</b></p>	
<p><b>1201</b> Authorize Intergovernmental Agreement with State of Oregon Department of Environmental Quality to investigate contamination threats to the well field in the Columbia South Shore and achieve contamination clean-up (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING OCTOBER 17, 2001 AT 9:30 AM</b></p>
<p><b>*1202</b> Extend term of ordinance granting PT Cable, Inc., formerly known as Pacific Telecom Cable, Inc., a telecommunications franchise through June 1, 2002 (Ordinance; amend Ordinance No. 163303) (Y-5)</p>	<p align="center"><b>175994</b></p>
<p><b>*1203</b> Intergovernmental Agreement with the City of Gresham for the cooperation of units of local government to prepare and update the Consolidated Plan to meet affordable housing goals and to receive payment (Ordinance) (Y-5)</p>	<p align="center"><b>175995</b></p>
<p><b>*1204</b> Agreement with City of Gresham for \$766,647 for the City of Gresham's HOME Investment Partnership Program and provide for payment (Ordinance) (Y-5)</p>	<p align="center"><b>175996</b></p>
<p><b>*1205</b> Agreement with Outside-In for \$35,576 for transitional housing and case management for homeless youth with HIV/AIDS and provide for payment (Ordinance) (Y-5)</p>	<p align="center"><b>175997</b></p>

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<p><b>*1206</b> Amend agreement with Community Energy Project to extend contract period, increase contract by \$20,000 for the Lead Poisoning Prevention Workshops, and provide for payment (Ordinance; amend Agreement No. 33344)  (Y-5)</p>	<p align="center"><b>175998</b></p>
<p><b>*1207</b> Agreement with Neighborhood Pride Team for \$50,000 for the Entrepreneurial Training and Trillium Artisans programs, and provide for payment (Ordinance)  (Y-5)</p>	<p align="center"><b>175999</b></p>
<p align="center"><b>City Auditor Gary Blackmer</b></p>	
<p><b>*1208</b> Assess system development charge contracts and Private Plumbing Loan Program contracts (Ordinance; Z0735, K0039, K0041, T0057, P0058)  (Y-5)</p>	<p align="center"><b>176000</b></p>
<p><b>*1209</b> Authorize Intergovernmental Agreement with the State of Iowa, Office of the Ombudsman, to license, install, and configure a Case management System for the Ombudsman Office (Ordinance)  (Y-5)</p>	<p align="center"><b>176001</b></p>
<p align="center"><b>REGULAR AGENDA</b></p>	
<p align="center"><b>Mayor Vera Katz</b></p>	
<p><b>*1210</b> Amend City Code relating to the Office of Management and Finance (Ordinance; amend Chapters 3.15 and 5.04)  (Y-5)</p>	<p align="center"><b>176003</b></p>
<p><b>S-*1211</b> Authorize a one-time exception to City Code Section 4.12.040(b) to allow carryover of vacation in excess of two years' accrual for eligible non-represented employees (Ordinance)  <b>Motion to accept the substitute:</b> Moved by Commissioner Saltzman and seconded by Commissioner Hales.  (Y-5)</p>	<p align="center"><b>SUBSTITUTE 176004</b></p>
<p><b>*1212</b> Accept a \$36,240 grant from the Oregon Association Chiefs of Police and Oregon Department of Transportation for safety belt enforcement (Ordinance)  (Y-5)</p>	<p align="center"><b>176005</b></p>
<p><b>*1213</b> Accept a \$45,000 grant from the Oregon Association Chiefs of Police and the Oregon Department of Transportation for overtime enforcement of driving under the influence of intoxicants infractions (Ordinance)  (Y-5)</p>	<p align="center"><b>176006</b></p>

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<p><b>1214</b> Authorize Memorandum of Understanding and Reimbursement Agreement with the Portland Office of the Federal Bureau of Investigation to participate in the Portland Joint Terrorism Task Force (Ordinance)</p> <p><b>Motion to consider the previous testimony and make that testimony part of the record on the new ordinance, accept written testimony submitted to the auditor's office by the close of business on October 16, 2001, not accept any additional oral testimony on this item, and this motion would suspend any rule allowing any contemporaneous oral testimony at a first hearing:</b> Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.</p> <p><i>This ordinance has been filed to correct a procedural error. A previous comparable ordinance, authorizing Portland participation in a Joint Terrorism Task Force, was mistakenly identified on Council agendas. In light of the extensive testimony received on the earlier ordinance, the Mayor will ask Council to decline to receive additional oral testimony and make a decision based on the prior testimony and any additional written testimony that is submitted before the second reading of this ordinance.</i></p>	<p><b>PASSED TO SECOND READING OCTOBER 17, 2001 AT 9:30 AM</b></p>
<p><b>Commissioner Dan Saltzman</b></p> <p><b>*1215</b> Authorize a contract with Jacobs Associates and provide for payment for Supplementary Construction Management Services to the West Side Willamette River Combined Sewer Overflow Program, Project No. 6680 (Ordinance)</p> <p>(Y-5)</p>	<p><b>176007</b></p>

At 11:00 a.m., Council recessed.

**OCTOBER 11, 2001**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF OCTOBER, 2001 AT 2:00 P.M.

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

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

At 2:15 p.m., Kathryn Beaumont, Senior Deputy City Attorney replaced Linda Meng.

<p><b>1216</b> <b>TIME CERTAIN: 2:00 PM</b> – Review Intergovernmental Agreement between Portland Development Commission and Multnomah County regarding Children’s Receiving Center (Report introduced by Commissioner Saltzman)</p> <p>(Y-5)</p>	<p><b>Disposition:</b></p> <p><b>ACCEPTED</b></p>
<p><b>*1217</b> Approve Intergovernmental Agreement with Multnomah County for City funding contribution to the Children’s Receiving Center (Ordinance introduced by Commissioner Saltzman)</p> <p>(Y-5)</p>	<p><b>176008</b></p>
<p><b>1218</b> <b>TIME CERTAIN: 2:05 PM</b> – Appeal of Wilkes Community Group against Hearings Officer’s decision to approve the application of Mark Kuretich, for a 3-lot subdivision with a private street and an adjustment located at 1739 NE 143<sup>rd</sup> (Hearing; LUR 01-00248 SU AD)</p> <p><b>Motion to uphold the appeal and deny the adjustment as originally approved by the Hearings Officer:</b> Moved by Commissioner Hales and seconded by Commissioner Sten.</p> <p>(Y-5)</p>	<p><b>UPHOLD THE APPEAL AND DENY THE ADJUSTMENTS AS ORIGINALLY APPROVED BY THE HEARINGS OFFICER AND PREPARE FINDINGS FOR NOVEMBER 1, 2001 AT 2:00 PM</b></p>

At 3:34 p.m., Council Adjourned

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

By Karla Moore-Love  
Clerk of the Council

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

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**Closed Caption Transcript of Portland City Council Meeting**

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

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

**OCTOBER 10, 2001            9:30 AM**

**Francesconi:** Here. **Hales:** Here. **Saltzman:** Here. **Sten:** Here.

**Katz:** Mayor is present. Consent agenda items. Anyone want to take a consent agenda item off the consent agenda? Anybody in the audience want to take an item off the consent agenda? If not, roll call.

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

**Katz:** Mayor votes aye. All right. Time certain. 1193.

**Item No. 1193 and 1194.**

**Francesconi:** Thanks. Well, this is actually a historic and happy day for parks because we are creating first park's board since 1913, and this park's board is very talented group that we are going to introduce shortly. But first, the purpose is to implement the 2020 plan, that really is the most extensive citizen involvement that parks has had. Homestead did a terrific plan but he did it by himself. This 2020 plan is really done with the work of the citizens. So, the plan recommended creating a park's board, and that's what we are going to do today. The purpose of the park's board is to make sure that 2020 is implemented through a variety of measures. And it's also to provide a form for public discussion and decision making on issues like the memorial policy and others, as well as to advise the director and the commissioner on the budget and other controversial issues. And we have a very talented group to do it. I can't tell you what a great group this is. It's diverse geographically and ethnically and also in wisdom and experience, and that's really what they bring to this, and that's been the strength of our park system. So, maybe if we could have Charles Jordan and Joey Pope, who is going to be the first chair of the park's board, come forward.

**Katz:** Let's, Karla, read 1194, as well, because that's your board.

**Francesconi:** Charles?

\*\*\*\*\*: Thank you very much. Much to your disappointment I am going to be very brief. I just want to say --

**Katz:** Identify yourself for the record, Mr. Jordan.

**Charles Jordan, Director, Bureau of Parks and Recreation:** My name is Charles Jordan. That I did speak with the staff, and we are excited about this opportunity. [ inaudible ] even though the first one was not appropriate for the commission form of government, this one is most appropriate. Particularly given the new culture in Portland, and that is citizen engagement and involved and decision making, and that is something that we have not had in our history, so we are very excited about this. The staff and I spent a lot of time talking about the many dimensions that these citizens would bring to our liberations, our decision making, and, of course, to our recommendations to you. And so, I just want to thank for your support and the opportunity for us to work with a fine group of citizens that we have. And thank you very much to George Pope, who has a similar role in this group, so I will turn it over to you.

**Josephine Pope:** Okay. Josephine Pope, citizen. I wish to thank each of you, Mayor Katz, Commissioner Francesconi, in particular, without Jim and his drive and enthusiasm, I am quite sure we wouldn't be here today, or perhaps, tomorrow. I would also like to thank past park's commissioner, Charlie Hales, Commissioner Saltzman, and Commissioner Sten. I wish to thank each of you for your support of this enhancement of Portland parks, Portland park programs, and open

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space. This board will, I believe, lead to more parks and park programs, better parks and yes, better maintenance. I believe your support and confidence that this board can make a difference to the lives of all Portland residents is well placed. It's well to remember that immediately after the horrific evidence of september 11, where new yorkers gathered, where they went to seek solace, either alone or together, not in coffee houses. Not in restaurants, schools, shopping malls, theaters, but in public open spaces. In parks, in plazas, and in squares. Those special places which belong to no one, in particular, and everyone, in general in america. We will work tirelessly, I assure you, to insure that your confidence is well placed. And that Portland parks continue to meet the needs and the desires of all residents. Thank you very much.

**Katz:** Thank you. Questions? Thank you, everybody. And good luck. All right. Karla? Public testimony. Anybody sitting in the front row that's going to be serving on the board want to come up.

**Francesconi:** Board members, this wasn't planned but you are more than welcome. If any of you want to come up and say a few words, please feel free.

**Katz:** Anybody else want to come up and say something? Why don't you introduce them.

**Francesconi:** Yes. They are not all here. But, let me introduce those that are.

**Katz:** The shy and retiring ones.

**Francesconi:** Let's start with barbara walker. Barbara, go ahead and stand, if you would. Barbara has been the heart and soul of parks for a very long time, not just trails, but the greenway and whole system. It's great to have you on the board. Scott montgomery has been passionate about sports, but also the recreation side of parks and how that fits, and we are lucky to have you, scott. Tony palermini. Tony is the mayor of all of east Portland, not just -- [ laughter ]

**Francesconi:** He was a superintendent of david douglas for 14 years. He brings a financial acumen. A passion for east Portland but also management efficiencies and he was on 2020. We are lucky to have you. Mike houck, we all know mike, his, actually, helping us appreciate nature within a city, an urban growth boundary, he's probably one of the best advocates in the country, and he also understands the recreation side, as well, which is terrific.

\*\*\*\*\*: Probably the first time I haven't actually taken the opportunity --

**Katz:** We noticed. [ laughter ] we were sort of keeping our fingers crossed. [ laughter ]

**Francesconi:** Pastor t. Alan bethel, also a member of 2020. Pastor from northeast, who understands the importance of parks to our young people, all of our young people that need to diversify the city. He's been a leader in justice within the park system and the whole city, and we are honored to have you because you could be in many other places so we appreciate it. The other people, and I will be brief, we have chet orloff, who is on the board, couldn't be here to bring us kind of a historical perspective, and we hope to get some ink in the editorial page repeatedly with chet so it's good to have him. Tom brown, who is a small business neighborhood activist, and also does a lot at the local level on the environment. Jess jesus carreon, he's the president of pcc. He's hispanic. We are honored he joined the board, his first major board in Portland. Leung holden, frankly, we need to do a better job of reaching out to asian youth and all youth. And mary reuble is going to help us in our business connections which frankly we have to strengthen. And jim zehren, is, of course, we all know jim, brings a very important regional perspective, as well as others. So, I think that I have listed everybody, except for one person, the godfather of our new park's board, my father, leo Francesconi, who is sitting in the back here. So. [ applause ]

**Francesconi:** So anyway. That's all I had to say.

**Katz:** Okay. So nobody else wants to testify? Okay, we will take a roll call on 1194. I need a motion to accept the report.

**Sten:** so moved.

**Katz:** Is there a second?

**Hales:** Second.

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**Katz:** Roll call. I am sorry, I am sorry, let's start with 1193.

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

**Katz:** Mayor votes aye. 1194. The motion was made. It's seconded. Roll call.

**Francesconi:** I am really honored you all chose to serve. You could all be doing other things and we appreciate that you devoted it not only to parks, but really to our city because you understand the importance of our city and the future of our city and the young people, the roll that parks plays in that, so thank you all to serving. Aye.

**Hales:** Aye.

**Saltzman:** Thank you all for your service. Your fourth coming service and I want to thank commissioner Francesconi for working to put this board together, it's great to take old ideas and get them going again and give new vibrancy to them, so thank you.

**Sten:** I think this is a timely move and I think that commissioner Francesconi has right vision and you guys, my congratulations and condolences. You will have to carry it out. [ laughter ]

**Sten:** And I think you will. Aye.

**Katz:** Mayor votes aye. All right. Why don't we take a --

**Francesconi:** We will have a celebration later.

**Katz:** Why don't we take a recess until 10:00.

At 9:41 a.m., Council recessed.

At 10:00 a.m., Council reconvened.

**Item No. 1195.**

**Katz:** This is a substitute now. I need to have a motion to introduce the substitute.

**Hales:** so moved.

**Katz:** Do I hear a second?

**Saltzman:** second.

**Katz:** Any objections? Hearing none so, ordered. Who wants to come down and tell us what all that we did. Mr. Adams? Cynthia? Jim? Who wants to start?

\*\*\*\*\*: I will make a quick introductory comments.

**Katz:** You need to introduce yourself.

**Sam Adams, Chief of Staff, Office of Mayor Vera Katz:** I am sam adams, and I work for you.

**Katz:** Wait a minute, no, you don't work for all of them. [ laughter ]

**Adams:** I work for you.

\*\*\*\*\*: Tim works for all of us.

**Adams:** Fair enough. With the elimination of the insurance requirements, the indemnity clause and now as a result of our first meeting before the city council, the elimination of the fees for the certain number of events. This, before you today, the substitute definitely fort feist freedom of speech. It clarifies government regulations as it pertains to street and sidewalk use, and companion memo and the chief will be before you in just a few minutes, clarifies the approach, the approach the police bureau uses in terms of how they will be enforcing these amended regulations. I believe, as a result of all these changes, and we have had a lot of good input from a variety of community members, I believe that these changes will provide for any reasonable person of good will to get a permit.

**Katz:** So let me clarify, these changes reflect the council's directive on the issues. I remember somebody asking, and I recall I had asked it a long time ago, how much do we make on the \$70, and it was obvious that that could be totally eliminated.

**Adams:** So nancy will go through the changes, and then.

**Katz:** Nancy, move closer to the mike.

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**Adams:** Earlier this morning I sent out a e-mail. I don't know if you have had a chance to look at it in response to the aclu letter we got late yesterday afternoon, so I will have nancy do the major changes and do you want to cover the aclu issues, as well?

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

**Katz:** Nancy, identify yourself for the record.

**Nancy Ayres, City Attorney's Office:** Nancy, city attorney's office. We made a number of changes, as mr. Adams has indicated, in response to both the aclu's comments and comments from other persons in the community. We have eliminated the \$70 --

**Katz:** Karla? Could we get a higher volume on this?

**Ayres:** We eliminated the \$70 fee for large sidewalk and street uses. We have added criteria for fee waivers. We have deleted the waiver for insurance. It was -- the previous version had a provision that would allow us to waive insurance but we felt after reviewing this, that the events that, that, for which insurance is required, have sufficient risk, that it would really be irresponsible to allow a waiver of insurance. So, for the sidewalk use and the street use, there will be no insurance requirement and no fee. For the other uses, there will be fees and insurance requirements.

Although, there is still a provision for a fee waiver for the other larger events. We redrafted the language on monitors. There was concern about identification of monitors. The new language says that for street and small parade uses, the monitors will be identified by a head count at the time that the event is to begin or shortly before the event is to begin. For the sidewalk uses, monitors are not required at all, so that it's not an issue there. For the other events, the large parade, small and large athletic, extra large and exceptions, we have retained the requirement that the sponsor provide the name and contact information. We felt this was necessary to give the city the ability to at least check to make sure that there will be an adequate number of monitors provided by the sponsor for these larger, more complicated types of uses.

**Katz:** Let me just interrupt you for a second. We have had some parade or gatherings in parks where there was a little parade and then a gathering. And are you requiring of those, let's say, 200 in a park, contact with the monitor?

**Ayres:** Well, this ordinance does not concern any park uses.

**Katz:** All right. Street uses for \$200, to have monitor contact?

**Ayres:** That would just be the head count.

**Katz:** The head count.

**Ayres:** So street use or, or a small parade would be a head count, a large, what's the --

**Adams:** A head count the day of the parade.

**\*\*\*\*\*:** Is 750 participants, is that correct? Or more.

**Cynthia Warren, Special Events Coordinator, Bureau of Licenses:** It's an event that would require -- sorry cynthia, license bureau, for any event that's going to require barricades, that's where we want to have the ability to identify monitors in advance.

**Katz:** Differentiates from leaders of, of the event, because sometimes it's very difficult to find a leader of an event to try to get information about where they are going and what they need.

**Adams:** So, to try to summarize and clarify, those events that currently now do not require insurance do not require indemnity, and will not be paying a fee, we are asking for monitors to just be identified to the incident commander or the on-site person the day of or just before. The larger events that are more formal, like the runs --

**Katz:** You don't necessarily need their names and the contact but they need to be identified. Okay. Go ahead.

**Ayres:** The next change was in the code, itself. There previously was a provision for a civil penalty of \$500 and we eliminated that. We realize that the penalty -- the way the language was written the penalty was to be imposed on the sponsor but if someone was conducting one of these uses without a permit there would be no sponsor, so there would be no one to penalize. We just

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simply eliminated that. The criminal penalties, of course, for unlawful behavior would still apply to individuals who decide to behave in that way. In regard to the aclu --

**Katz:** Would you put the sign down? We don't permit signs -- thank you. I will see it later when we finished.

**Ayres:** The latest letter from the aclu we received yesterday afternoon, one of the issues raised was the requirement that if -- that there be at least 75% of the minimum number of participants show up for the event or else the event could be modified. We felt it was really important to retain that. Otherwise, the city's resources could be tied up, if -- the minimum number is 75 people, or 70 people. You know, if someone anticipated a very large event and only 12 people showed up, it would be inefficient to use the city's resources for -- to conduct the event. So, that type of event then would be modified and be put on the sidewalk where they could conduct their use there.

**Adams:** And just to clarify --

**Katz:** Identify yourself for the record because there are four of you here.

**Adams:** Sam adams, city of Portland. To clarify, the e-mail I sent out this morning was that it was 15 minutes before the event, which is what the aclu had concerns about and the ordinance is -- I was wrong. It allows for 15 minutes after the designated start time.

**Ayres:** The language is actually within the start time, and the practice has been interpreted to be 15 minutes after the start time or more. Frequently, according to Cynthia, the -- they will wait even longer, if necessary, but with, within the language it gives us some flexibility, at least.

**Francesconi:** So what's the penalty of somebody, if somebody violates that? What's the penalty? I suspect --

**Ayres:** If someone --

**Francesconi:** I suspect there is no penalty. It's a good idea.

**Ayres:** The penalty, as written, would be modification or revocation of the permit. In practice, that has not occurred.

**Francesconi:** Okay. Thanks.

**Katz:** Are you finished.

**Ayres:** Yes.

**Warren:** Cynthia Warren, license bureau. To clarify on the last issue. The modification would be like Nancy said, if they tell us 2000 people are going to be there, the minimum requirement is 75, they don't have 75% of 75, they have the 12 people. Those would be the -- the modification would be to change it from a street use to a sidewalk use permit. They would still be able to proceed but not be able to interfere with the traffic.

**Katz:** But the primary reason is to modify the resources that were planned to be used for that day. Okay. Jim?

**Jim Wadsworth, Director, Bureau of Licenses:** Jim Wadsworth, director of bureau of licenses. I just wanted to clarify the revenue loss, and it was just over 2000, so as you said, Mayor, it's, it's something that we can deal with at the bureau and I believe it helps the overall process and the permitting all around. So, we are very much in favor of it.

\*\*\*\*\*: Sam?

**Adams:** No, just Chief Kroeker wanted to make --

**Katz:** All right. I just wanted to make sure that there are no more questions by the council. Thank you. Chief? Why don't you come on up and Commander Sizer. There was a question that the council raised, as to how, how do you, in fact, deal with a lot of the nonpermitted events and so that was a legitimate issue that most of the council isn't aware of, so you have an opportunity now to talk about that.

**Mark Kroeker, Chief, Bureau of Police:** All right. Mayor Katz, and commissioners, I am Mark Kroeker, chief of police of the city of Portland, and with me, Commander Rosie Sizer. Commander Sizer is the commanding officer of central precinct where at least 80 to 90% of the, of the incidents

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occurred that would, in some way, come under the regis of the ordinance that you have before you today. What I would like to do is to talk for a moment about the approach to the enforcement of the street and sidewalk use regulations, and I think that perhaps, the best way to do that is to read a memo I sent to you, mayor Katz, and then answer any questions that you have and perhaps make just a couple of remarks about the implications of that ordinance, and police operations. And it reads to mayor Katz and the subject is, enforcement of street and sidewalk use regulations. The purpose of this memorandum is to summarize the bureau's approach to enforcing the city's revised street and sidewalk use regulations. And an integral part of community policing is a focus on creating partnerships between law enforcement and the communities we serve. And an essential component of this partnership as it relates to events that use the city streets and sidewalks, is a way that police and communities work together to prevent and resolve problems. This is accomplished by establishing an open and continuous communication with event sponsors to insure that the event is completed safely and minimizes any disruption to the rest of the community. The Portland police bureau fully embraces the need to protect citizen's rights to freedom of assembly and expression, while also protecting citizen's rights to travel safely and expeditiously on public streets and sidewalks. Just a little bit of feedback, maybe. The Portland police bureau will provide police and traffic management escorts when appropriate in order to help any permit holder, conduct a safe event in accordance with the terms of the permit. However, any unpermitted events are not insured any greater access to streets and sidewalks than the general public. The bureau may use its discretion in all lawful methods to prevent such events from unlawfully blocking public streets or sidewalks. And it's signed by me, mark kroeker, chief of police. And I would just quickly add that as we consider permitted events and under the guidelines of this ordinance, what this does for us is to greatly facilitate the communication that is essential before any event takes place. It allows for a very clear expectation. It allows for an understanding between demonstrators and police, and it allows for the deployment, the unleashing of a tremendous amount of services that we have in the bureau's assets to be of help so that the events can take place in the spirit of what was intended with the agendas the people have, and so that they are, in fact, protected from other problems that might occur with either traffic problems, antagonists or whatever. And so it, and the way of facilitating the, the securing of a permit, through this process, and the specificity of that and allowing for the wide range of alternatives that are in this ordinance, we think that it's going to work just well. Very well for us. For unpermitted events, however, we are left to the, the vagaries of our ability to try and make contact. To try and communicate. To try and have an understanding without the, without enabling or the ordinance that brings us to the table by its own official process of the city of Portland. We, nevertheless, do that. We do open up the dialogue the best of our ability. We do have this contact, and then when the event does occur, then we, we police it with all the information that is available to us and in this case, we then, in the approach that is taken, consider items such as the size of the crowd and the nature and time of the event and the implications to the freedom of movement of other people in the city and its resources and its public transportation and the like, and so all of that is taken into account. The nature of the blockage. The weight that is imposed on other people, and so forth, and that's why in my memo to you, we have used this term, discretion. Discretion is in the, in the approach of policing, very, very necessary, as we give to an incident commander then, the responsibility to secure the best possible outcome, and I have to say over the last year and a half, as we have observed a wide variety of events in the city of Portland, there has been an evolution in this process and a learning curve that the Portland police bureau has undertaken to the point now where there is an approach that seems to work quite well on either permitted or unpermitted events, but in any case, the permitted events reduced the uncertainty of what we are to expect and enhanced the communication and allow for greater and more event-specific deployment of resources. This is good for all of us. So, I don't know if commander sizer --

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**Katz:** Let me pose a question to you, commander sizer. You have a nonpermitted event. You estimate that you may have up to 200 people. What procedures do you go through? Identify yourself for the record.

**Rosie Sizer, Commander, Central Precinct:** Rosie sizer, commander of central precinct. There are permitted events that we can ably plan for and we have ideas of the size and scope. One of the problems with nonpermitted event is we don't have events. We don't have the communication vehicle in relationship with the sponsors, so we often have trouble determining exactly how many people will be there. But, we try to get an idea of how many people will be there, and then plan accordingly, and deploy accordingly. We are working on greater flexibility in terms of deployment of our resources, if we have planned for a larger crowd than actually materializes, we are working on ways to utilize those people so we don't have such an up front and intrusive police presence. That's something that's come with the maturity of our response to these. We also, as an incident commander on a number of these events, we look at a number of criterias the chief explained about decision making criteria, and what we are looking at is the size of the event, the composition of the group, the behavior of the group, the location of the event, the impact on surrounding residences, businesses, and pedestrian, and vehicular traffic. And then our resources and ability to respond, and out of that decision making criteria, we try to develop strategies that are common sensical, that meet kind of the long-term and medium-term needs of the city, and the whole community. I don't know if that is specific enough for you, but that's kind of the general framework that we use.

**Katz:** Thank you. Questions by the council? Okay. Thank you.

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

**Katz:** All right, let's open it up for public testimony.

**Brent Foster:** Good morning. Mayor Katz, and city commissioners. First I would like to thank all the people I know put a lot of time and effort, and I think good thought and intentions into revising the street and sidewalk permit regulations. I think that the document before you today has a number of dramatic improvements from the one that was before you several weeks. It's something that I think has a number of really wise provisions that are going to -- that will make it easier to get a permit, and I think we will also lead to less conflict for unpermitted events. My comments are going to be directed at both the small and large sidewalk events and I am not paying as much attention to the other ones. I support the civil penalty, for failure of an organizer to get a permit. We have seen a number of nonpermitted events go off smooth as silk, even in the last two weeks, and that's because there is contact between police and the event organizers. That, under these regulations, can continue to happen. There's going to be unpermitted events, and in some ways, they are unavoidable. I may do an unpermitted event some day if something happens on a friday afternoon or a saturday morning, and there is the need and it's justified to respond on saturday or sunday. I also think that the, the elimination of the fee is just another really smart approach. It doesn't make a lot of money but causes a lot of anxiety for people who have to pay it. Also, avoids administrative problems with having to waive the fee. I think that also the requirement not to require insurance or indemnity for these events where that creates a serious burden to actually getting the permit is also a wise idea. I have two primary concerns and the changes before you are just excerpts of the changes I make, and I kind of whipped them up this morning so apologies for typos and things like that. The first one involves section 7, which deals with the review process, and again, I think that there needs to be some consideration in there of the city, that the city should encourage or promote or at least protect people's constitutional rights. I think it should be included explicitly in there but an alternative is what I have before you, which is simply to say that sidewalk, street and sidewalk use coordinator shall review applications for permits, consistent with or I think based on the purposes of these regulations, which was changed to include the need to protect the first amendment rights, et cetera. That's not -- I don't think that makes that, that -- something than that contact neutral. Simply saying we want to implement the constitution. I don't see any content

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in there. It's just reiterating what, what I think we can all agree is a goal of these things. Second off, is the provisions for monitors. I think that what's before you is better than what was before you before, and that it doesn't require the names. I still think that, that this goes too far, and the city kind of putting its -- what's going to be -- it's going to feel like the city is putting its thumb into somewhere it shouldn't. Again, people are almost, all the events, the norm is to have these monitors, is to, is to have -- I don't like calling them monitors because it, it, it is just the word. I have problems with, as well as what I think, how it's used here. I recommend change it go to, an event coordinator. Something akin to that, and making it that the city strongly recommends it. The language before you would do that. And I think still meet the goals of this. Just one quick final things is that there was some concern from folks about the definition of animals. I don't think the intent, if people have their dogs to require the large permit but under the plan reading, you could, you could construe that, so again, I appreciate your time and the time that everyone who worked on this, and, and I am going to have to be at a meeting at 11:00 so I hope be around for the conclusion but I appreciate your help. Thank you.

**Katz:** Identify yourself.

**Dan Handelman, Peace and Justice Works, Portland Cop Watch:** Mayor Katz, commissioners I am dan handelman with peace and justice works, Portland cop watch, and we testified the last time this came forward and I have a version of the, of the code that was dated october 1st, so some of the stuff, I think, sounds like it has been changed so I hope that I don't misspeak about things changed since then.

**Katz:** You will be corrected if --

**Handelman:** Great. Some, I think that there have been a lot of good changes, I agree, that, that dropping of the permit fees for some of these events is a very good thing. I am also glad to see that the root planning is going to be with traffic management now, as I suggested instead of with the police. I hope that that's held to -- we also, though, think that there is still a little bit too much discretion for the police to revoke the permit. The language is kind of vague about what should be done if they are considering revoking it, it says that they shall attempt to contact and shall attempt to resolve and I think that there might be some stronger direction there to, to make sure that the contact happens before something gets revoked. The -- and in terms of what was just said by the chief and the commander, the cooperation with the police is more highly unlikely in cases of marches against government policy, and as much as yes, I believe that we should have community policing where the police and the community are working together about what their needs are, there has to be an understanding that when people are marching against government policy, that police are the, you know, recognized agents of the state that are being protested against. It is not necessarily going to happen that be? Somebody is going to be willing to discuss what their protest plans are with somebody representing the state, they are protesting against. In terms of insurance waiver, maybe it got written back in, but my understanding was the city attorney said that, that it had been removed because it was only for those events with vehicles or animals and as brent mentioned, I am not clear if that means bicycles or dogs. I hope it doesn't. And it seems like, if you have a march that's, that's a mile long that's got more than 75 people, going through the streets, it's not a parade it, shouldn't cost \$575 for you to do that, and there should be some kind of indication here that, that the addition of those things, which are specified by the city attorney as the conditions, the animals and the vehicles, that that's what trips it to go up to a higher amount. Instead of having to get an exemption, a special exemption every time you do some kind of march like that. I also think it should be specified that the number of people, the people projected should be -- it should be specifically say 15 minutes after the start time because if you shut somebody down, 15 minutes beforehand, that's completely unreasonable. And lastly, I would like to throw in here that this public discussion about these things is very important, and as you know, there is an item on the regular agenda coming up about the joint terrorism task force and I am not going to talk about that

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issue but just going to say that you can at least limit it to testimony about information that was brought up from the last, between the last hearing and now, and at the last hearing that was unable to be talked about, than, and you can cut off testimony if you think the audience is behaving in an unacceptable manner. I think it would be great. I think the more you cut off people's right to be heard through this process, the more they will try to find other ways to get their message out and I think that that's unfortunate if people don't have a chance to have their voices heard. And I think that people -- there aren't that many people here today, and the public can see when the voices of concern are being silenced. So.

**Katz:** Thank you. Questions? Thank you. Anybody else want to sign up? Nope. Why don't you come on up and respond to what we heard.

**Adams:** Sam Adams, city of Portland. I will deal with the attempt issue, and Nancy will go through the other points. It's written as attempt because if you have been in these, at these events in these situations, the police should make every attempt to make contact and take care of problems before they occur working with the event organizers and the monitors, and as the police pointed out of the past year and a half, that's exactly what they have been trying to do. But, it's our recommendation that you keep it and in terms of attempt because to saddle the police with inaction until they can make the contact, we don't think is prudent.

**Ayres:** Nancy, city attorney's office. In regard to the review process, an inclusion of constitutional rights is one of the criteria for review. We did consider that, but just, in response to this issue being raised previously, but we decided that it would -- it is better to leave it out as a specific criteria for review because we have worked extremely hard to make sure that these regulations remain content-neutral, and we don't want to be making decisions based on whether someone is expressing constitutionally protected rights or not. We have stated in the purpose of both the code and the regulars. We have enlarged upon the purpose sections to include language that allows for the purpose to consider can the rights of citizens to express themselves, and we feel that this is adequate in order to meet those needs.

**Adams:** Or said another way, we think that it's a given assumption that we should be facilitating the people's expression of assembly, and that it shouldn't be sort of a criteria that a city staffer could use to deny.

**Ayres:** And again, in regard to the comment of Mr. Handelman about the bikes or dogs, the regulations concern motor vehicles, not bicycles. And dogs, I guess, would not be included. Service dogs certainly would be allowed under the ADA in any event. 75% requirement, again, we have talked about that previously, that the language is within. It doesn't say before, and typically, it has been practiced to wait at least 15 minutes after the start time before making any modification.

**Adams:** Again, for the record, then just to clarify, so the inclusion of dogs in an event would not kick it up to the higher requirements.

**Katz:** All right. Questions? All right. Council, if there aren't any motions or changes, then I am -- this is going to pass to second. This has been the first reading of the substitute. Okay. It moves on to second. All right. Let's move on then to our regular agenda. Item 1210.

**Item No. 1210.**

**Katz:** Okay. Tim, come on up. I don't have any opening remarks because I got in late last night and didn't have a chance to put anything together.

**Francesconi:** Folks who worked last item, thank you.

**Katz:** I am sorry, Commissioner Francesconi, thank you for reminding all of us. You all did great work. Appreciate it.

**Tim Grewe, Chief Administrative Officer, Office of Management and Finance:** Mayor Katz, members of the council, Tim Grewe, chief administrative officer, office management and finance. I had like to provide you a brief background on this particular action before you today. On May 3rd, 2000, via ordinance 17-4410, the council established the office of finance. At that time, sections of

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the code were modified to reflect a new organization. Then, on february 14th, you passed ordinance 17-5331, which gave direction on the implementation of the administrative service review recommendations, which also included further reconfiguration of city administrative services to realize cost savings and improve the provision of service. That ordinance directed them to return to you with necessary code amendments. And that's what the ordinance before you does today. It amends the code to fully comply with prior council direction and provide consistency with the current operations and services that are provided under the umbrella of omf. In some cases, we are reestablishing code that has been inadvertently repealed earlier that we found are necessary for operations. And that's scriptive. It reflects the responsibilities of the various organizations, that type of information. Other sections need modification to more accurately reflect that the organizational structure that's been in effect since it say created, that's been modified as you have taken actions. For the most part, this is housekeeping action. I want to be clear that the amendments are fully consistent with prior council direction, and reflect the organizational structure and administrative direction that was put in place at the time omf was formed, and also to comply with your direction on the administrative service recommendations. I will stop there and be happy to provide any further specification or respond to your questions, if you have them.

**Katz:** Okay. Questions?

**Francesconi:** This is a little broader question, and maybe it's not appropriate now, tim. Maybe you want to do it later, but are there some -- can you tell us the status of the hr reorganizations and how that's working in the it reorganizations or do you want to do that --

**Grewe:** I can do that now, but as I required of council previously we are going to be reporting to you on a regular basis in writing, as well to the bureau managers. That report will be issued probably within the next two weeks, and will bring you fully up to date on what's happening with those reorganizations but if you would like the information now, yvonne and glenn are both here.

**Francesconi:** Not in depth but what lessons have you learned and how is it going, just generally?

**Grewe:** I think it is, for the most part, going according to plan but I think what we have learned is that sometimes change takes a little longer than you initially anticipate. Particularly, if you are going to make sure that you have adequate provision for involvement of those that are going to be involved in the change. And I think that that's probably what you will hear in the first report is that things are progressing but perhaps on a slightly slower path than we anticipated. We are also finding that the opportunities have been tremendous, and that there has been a lot of inconsistency in how we approach administrative matters throughout the city so I think what you are going to see is some well thought out changes that are coming forward, particularly from it, and hr.

**Francesconi:** I am not up to speed on what where it stands but in terms of hr, it's really working very well in terms of both parks and fire and despite your pushy hr director, we really appreciate the direction you are heading in that regard and the service that the bureaus are receiving.

**Grewe:** One thing is for sure, you will see very clearly laid out policies that guide their services, that have consistency throughout the city.

**Katz:** Questions of tim? Anybody want to testify on this item? If not it, has an emergency ordinance. Roll call.

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

**Katz:** Mayor votes aye. 1211.

**Item No. 1211.**

**Katz:** This is a substitute. I need a motion to bring the substitute before you.

**Saltzman:** So move.

**Katz:** Do I hear a second?

**Hales:** Second.

**Katz:** Do I hear any objections hearing none so, ordered. Already.

**Katz:** We need both mics.

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**Yvonne Deckard, Director, Bureau of Human Resources:** Good morning. Mayor Katz, and city council. I am yvonne deckard and I am the director of human resources. Your pushy hr director. The pushy hr director. You have before you an ordinance to provide, to provide for an exception to city code 4.11040 b and 4.200.090 related to vacation carryover and administrative leave. This is -- we are bringing this before you in the event of a dc 2 strike that we can actually have a, our nonrep employees who may not be able to take a vacation time that they currently have on the books, as a result of service continuation or strike planning, and in the event of them having to cover, to make sure that the, that the essential services are still provided. Currently, the section allows carryover for vacation credits totaling 24 months of an employee's vacation annual accrual. Ours in excess of 24 months of vacation, that is not used before the first, beginning of the first pay period in january, would be lost by employees. The city, we also are authorizing the city, chief negotiator to negotiate any necessary carryover for represented employees in bargaining units who may also be in a situation of not being able to use their vacation as a result of maintaining the critical services of the city in the event of a strike.

**Katz:** Questions? Okay. Anybody want to testify? Roll call.

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

**Katz:** Mayor votes aye. 1212.

**Item No. 1212.**

**Katz:** Anybody want to testify on that? Roll call.

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

**Katz:** Mayor votes aye. 1213.

**Item No. 1213.**

**Katz:** Anybody want to testify? Roll call.

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

**Katz:** Mayor votes aye. 1214.

**Item No. 1214.**

**Katz:** Let me just explain technically what happened. The emergency asterisk was never translated onto either the daily general journal of commerce or ours. Consequently for me, I always thought this had a second reading or third reading or fourth reading, and took a vote, and the majority of the council supported the item, but with an emergency, it had to be unanimous. So, we have -- we needed to respond and bring it back.

**Saltzman:** I wish to make a motion. I think that we have had over six hours of testimony on this item in the past two weeks, and I do believe this was a scrivener's error and it's time to get on with what is truly the nation's and now the city's business, as well. And therefore, I would move that the council establish the following procedures for the hearing on this item. We will consider the previous testimony and make that testimony part of the record on the new ordinance. We will accept any written testimony submitted to the auditor's office by the close of business on tuesday, october 16th. We will not accept any additional oral testimony on this item, and although we probably don't needed to so, this motion would suspend any rule allowing any contemporaneous oral testimony at a first hearing.

**Katz:** Do I hear a second?

**Francesconi:** Second.

**Katz:** Any objections? Hearing none, the motion passes. This is not an emergency ordinance and it goes on to second reading. 1215.

**Item No. 1215.**

**Saltzman:** Madam mayor, this is a very big contract that we are proposing to award today, and it relates to construction management services for the west side combined sewage overflow project. This is not actually the general contractor selection. This is actually selecting the firm to provide construction management services in conjunction with bes staff to oversea this project, which will

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be somewhere upwards of \$250 million project. So this is a big contract in and of itself. This is over \$9 million, and we felt that any time that we are awarding a contract this big we should bring it forward to council on the regular agenda, and I am also pleased to say this contract does have almost 40% participation by minority women and emerging small businesses. With that, I will turn it over to dean.

**Dean Marriott, Director, Bureau of Environmental Services (BES):** Thank you, mayor Katz, members of the council. I am dean marriott, director of environmental services for the city. With me is paul gribbon, who will be making the presentation here moment arrival. We just have a short presentation for you. I want to just come before you today and refresh your recollection about the nature of the work that we are about to embark on and the size and scope of this project. Update you on the plans for the construction of the west side of the willamette, and provide a little background so you can better understand the ordinance before you today. In other words, why do we need the construction management contract to assist us with this work. Also, I am here today to report some good news. You will remember back in july we were here to talk about the construction on burnside and to update you on some projects that were going on during the summer. And I was -- I am pleased to tell you that the nightmare on alder street actually had a very short run and was not much of a nightmare. Although we certainly want to express our appreciation both for the council and your support for that difficult project which has concluded, by the way, successfully. We also want to express our appreciation for the businesses that were affected by the construction. They hung in there with us. They worked closely with us. We hope that we were responsive to their concerns during the construction period, and also, I want to express my thanks to the driving public and commuting public that found other ways to get to and from downtown and hopefully, that those that have experienced public transit will remain on public transit now that burnside is reopened. And timely want to express my thanks to the excellent staff at the bureau that I worked closely with other folks in the city, the city, including the police bureau and the transportation bureau that were very helpful in helping make that project a success. And with that, I would like to turn it over to paul cribben, who will make the presentation this morning.

**Katz:** Before he gets to the presentation, I don't know if commissioner Hales can answer this or you, dean. I, on purpose, traveled the designated route, and I guess the question I have because everybody was very nervous, that it won't work. Burnside is such a main arterial. Where did all the cars go? Because there is a study now on making burnside truly a boulevard and restoring it back to somewhat of its original, improved original role in the city, and if it worked so well, then that tells us a little bit so where did all the cars go?

\*\*\*\*\*: I will be happy to defer --

**Hales:** Well, I was going to say if you have an answer to that question, I would be surprised. [ laughter ]

**Hales:** Because I think, the mayor might recall, but it's a good question, and causes people in my bureau at least some of them, to, you know, consider, you know, screaming when I say this, but been our experience in interstate avenue was probably the last place we studied this, that about 40% of the studied traffic simply disappears. In other words, the margin of error in such things is much greater than we admit in the science, quote-unquote, of traffic engineering. And I think the lesson of that fact, that a lot of the modeled traffic simply disappears is that we ought to design streets for community purposes and to some extent, the traffic takes care of itself. And that's contrary to standard engineering practice and standard road building theology, but it seems to be true, and that we, we ultimately had to admit in interstate avenue's case that when we were moved, 50% of the travel capacity for cars of that street, about 40% of that traffic simply disappears into the street system and we don't know where it went. So, the same thing, I think, is true, that's one of the reasons why the nightmare on alder street wasn't such a nightmare is it's more complex than our

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models admit and people figure it out and they go in other ways, another time, they go by another mode and life goes on.

**Marriott:** I do think, to underscore that, it does make you want to challenge the conventional wisdom about things. I will add to that point that the commissioner made that I think what helps is excellent communication with people. Don't surprise people. Give them a lot of information so they can make plans in advance. They can change their driving habits or commuting habits, and I think to that extent, we were successful here, as well.

**Hales:** I think that's really true and you did a good job on this project, and remember the i-5 repair, you know?

**Katz:** I was -- that was going to be my same question, as well.

**Hales:** People surprised us. If the freeway was emptier than ever. So, people will take useful information and use it.

**Katz:** Okay. I just wanted to know if anybody knew. The answer is no.

**Paul Gribbon, BES:** I am paul gribbon with the environmental services.

**Katz:** You can testify on this one, later on, so you can tell us.

**\*\*\*\*\*:** I might forget.

**Katz:** No, you won't. [ no audible. [ no audio ]

**Gribbon:** Basic milestone so far, as we say, we had the original order in 1990. We completed the facilities plan in '94. Our focus planning on the willamette river began in '96. The columbia slough has been controlled, that was completed by 2000 and we are looking at a 2001 deadline, we only have one remaining to control which will be done by the end of 2001, and the next one we are looking at is the willamette river, the major facilities being done by 2006, and being done by 2011. So far, we have removed 3.2 billion gallons annually of csos from a total of 6 billion. The columbia slough outfalls have been controlled. We have 7 willamette st. Louis controlled by the end of in year. And the tanner creek phases will be nearing completion in 2005. This gives you an idea of the major west side cso facilities and what we consider the major facilities of the southwest parallel interceptor, which starts at taylor's ferry, and ends at approximately clay street, where, then we have the, the 14-foot diameter cso tunnel starting at clay street running along southwest naito parkway to northwest 19th where it crosses under the river to 2 220 million gallon a day pump station on swan island and then two force maintenance. One done by 2006, the peninsula force main, and eventually the east side tunnel will tie in at the same spot and will put another force main to the existing port smith tunnel. You have got a map of this at the last page, the 11-by-17 is a map. We have got some significant challenges here. We have got a large tunnel, like I said, 14-foot diameter located in an urbanized area. Our average depth is about 120 feet below the surface. We have good lot of historical development of the waterfront. A lot of old foundations that still exist under the fill that we are avoiding and the geological conditions which I will get into in a minute are going to be somewhat challenging. We will also have large shafts that go down through the tunnel and will change from 40 feet to 145. The only 145-foot shaft will be on swan island so we don't have any quite that size downtown but the shaft will go from 120 to about 160 feet, and they also be challenging because we are dealing with soft soils and a high groundwater table. And this gives you an overview of the tunnel. Starting here at clay street, and each of the red dots shows you where the shafts will be so this is the clay street shaft, this is the one at ankeny pump station. This is albert's mill, north of the Broadway bridge and then the upshire shaft. This is the fremont bridge here. We have one more, nicole ", before the red crosses the river. We will have a confluent structure here which will tie in the east side tunnel, and then this is the swan island pump station. The shaft, this is the overflow line and what happens when this line overflows, you have circular motion down the shaft into the tunnel where it all collects in the tunnel and goes across the river. This is what a shaft would look like under construction. And these white pipes on the outside is actually a soil freezing process where the groundwater is frozen around the shaft, such that we can

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prevent groundwater infusion into the shaft and as we dig it, we can pump it out and have a dry hole when we are done. This just gives you an idea of what the, where the tunnel will be located relative to the willamette, and waterfront park and naito parkway. And this gives you an idea of the soil conditions that we are going to be facing. We have everything from cemented gravels to soft sands and silts and some fill, so it will be very, a very challenging process, and we will be about 40 to 50 feet underneath the bed of the willamette, as we cross. And this gives you an idea of what the machine will look like, that actually will do the tunneling. This is about the approximate size. About a 16-foot diameter. We have got some risks, one is the schedule. This is a very aggressive schedule. And the way that we have got the construction schedule laid out now, we can make the deadline. Our concurrent estimate for the southwest interceptor of the tunnel and the pump station is about \$260 million. This is a major construction project. This is bigger than what we have done before. We have got a lot of interaction with the public. We want to keep business disruption to absolute minimum and traffic and other community impacts to an absolute minimum and we are working with the business associations and neighborhood associations, specifically, around the shaft locations downtown. And then technical side, the subsurface conditions will be challenging, as I talked about, and we have also have bridges going by so we have got to be very careful. So, the purpose for the construction management support contract a is we wanted to get the strongest schedule and cost control expertise that we can find, and we wanted to get people with deep tunnel and shaft construction experience, that have been on other projects before similar to this one. And we wanted to have access to specialized expert services as we needed them. As we come across challenges that we want to have access to those experts, and we want to use our existing staff to have -- we worked on a previous tunnel on columbia boulevard and we want to retain the expertise that we get during the process of putting this tunnel in so we have it to use when we get to the east side tunnel. So, the specific type of expertise we are asking for from jacobs associates as a construction manager, tunnel inspectors, experienced cost engineer, schedulers, and geotechnical engineers and have access to tunnel and shaft experts as we need. On the city side, what program management, consultant management oversight and all the major pieces of this project, also inspection, safety, and overall project administration. The costs, when we looked at what we did on the columbia slough, our actual construction costs were \$100 million. Our consultant support contract finished at \$3.6 million, which is 3.6% of construction costs. This is about the same percentage. This is about 3.7% of the overall construction estimate, which is consistent with also with other agencies. And in this particular contract we have two minority firms. A minority firm and a woman-owned firm for about 39 or 40% of the participation on this by, by cost. So, our recommendation is to, is to proceed with retention of the construction management support contract.

**Katz:** Thank you. All right. Questions by the council? Anybody in the audience want to testify on this item? All right. This is an emergency ordinance. Roll call.

**Francesconi:** Well, this really is a massive project, and you are doing a great job, not only in terms of traffic disruptions, we talked about, not only in terms of minority contracting, which is great to hear what commissioner Saltzman said, but it's just such an important infrastructure in terms of water quality so you deserve a lot of credit for ow you are handling this. Aye.

**Hales:** Want to reiterate, just a side point I have made a couple times along the way. This is a very dramatic piece of construction. We continue to be bedeviled by new arrivals in salem who recite the theology that Portland is not solving this problem. I hope that you will work with them, immediately after the next election, over as many new legislators into the bottom of one of the shafts, and as possible, and bring them back up to the surface when they promise not to talk like that any more. [ laughter ]

**Hales:** Aye.

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**Saltzman:** Well, this is a major step forward, and some of the actual hard construction work of cleaning up the willamette river, and we talked a lot about early actions for the river renaissance program and this project truly will be very tangible for the west side, early action and dramatically improving the water quality of the willamette river and I am pleased to say this is all ontime and onbudget with the mandated schedules. Good work. Aye.

**Sten:** Good job. Aye.

**Katz:** Good work, dean and team. Aye. All right everybody, we stand adjourned until tomorrow at 2:00.

At 11:00 a.m., Council recessed.

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**Katz:** Good afternoon, everybody. The council will come to order. Karla, please call the role.

**Francesconi:** Here. **Hales:** Here. **Saltzman:** Here. **Sten:** Here.

**Katz:** Mayor present. Let's read.

**Item No. 1216 and 1217.**

**Katz:** Commissioner Saltzman?

**Saltzman:** Thank you, madame mayor. As you may recall on June 15th when we approved the gateway urban renewal agreement, the city council also agreed that a certain amount of tax increment money should go towards the completion of phase 2 of the child abuse receiving center, which is I'm happy to say is now under construction on 102nd and Burnside. Phase 1 building, which is under construction right now, you'll recall is the residential center, where the kids who are abused and neglected will be taken to right away for care. Phase 2, which we are contributing tax increment money to, is the renovation of a building that will house Portland police, the district attorney's office, services to children and families, child abuse hot line, and other related law enforcement services related to child abuse. And they will be all co-located in one building to respond quickly to these situations. We were tasked -- when it passed on June 15th, pdc, the county, and I, all agreed to work out the details over the ensuing 120 days of coming up with a way to provide up to \$1.2 million in tax increment dollars to complete phase 2 of the receiving center. So I'm pleased -- I think we're just ahead of the deadline of 120 days, but I'm pleased to say we have reached agreement with the county, pdc has reached agreement with the county, and I'm fully supportive of the deal. The final deal actually commits us to pay \$954,000 in tax increment dollars rather than \$1.2 million. We have Kenny Asher from pdc is here. I thought Lisa Naito was maybe on her way here too, but Kenny if you wanted to walk through this intergovernmental agreement that we're approving today.

**Katz:** Kenny, do it quickly.

**Kenny Asher, Project Manager, Portland Development Commission:** Kenny Asher, pdc project manager. This is a good agreement. Essentially what it says is that pdc will contribute \$954,000 to the county -- counties that can use it at its discretion. What the commission gets in exchange is some land, about an acre on the site, and also site improvements, and those are things that are fully supportable in our urban renewal plan, taking care of that vacant property and also upgrading the pedestrian environment. So the commission is very comfortable with where this ended up. I would personally like to suggest that the breakthrough came before this negotiation even started with the council's contribution of \$1 million to the project. The difference between \$1 million out of the urban renewal district and \$2 million is huge. Frankly, that's a park, and I want to thank you all for that. Dick Cooley has a very short statement that he asked me to read into the record.

**Katz:** Go ahead.

**Asher:** Dick's statement reads -- he's chair of the opportunity gateway program advisory committee. I have testified to the county commission and the development commission and regret being unable to testify before council on the matter. The pac had three goals regarding the crc. One, make a thoughtful, constructive response for financial support. Two, protect the limited resources of the gateway urban renewal district. And three, support to the extent possible a wider community goal of making the crc a reality. Pac appreciates the firm support given gateway. The willingness of the mayor and city council to use city funds to reach a workable compromise. The fairness of the county in the face of frustrating negotiations and the goodwill of city council and county commission in honoring the role of the gateway pac. The pac wants to partner with the county in the future. We can believe we can intersect in creative and deliberate ways where a deliberate and proactive way is made to do so.

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**Katz:** Did your attorney review the last sentence?

**\*\*\*\*\*:** That's dick cooley, program advisory committee.

**Katz:** All right. Commissioner?

**\*\*\*\*\*:** Thank you. I think a lot of the thank-yous have been said --

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

**Lisa Naito, Multnomah County Commissioner:** For the record, my name is lisa naito, county commissioner. I would like to thank kenny, the work of the pdc, dick cooley particularly worked very hard, and most of fall I thank dan Saltzman for his work. What really began as the county under dan's leadership looking at how we could help kids taken into state custody receive better services. Now our partnership with the state has looked to look for federal participation for actually doing the operational fundings for, but the majority of my thanks today goes to all of you for your partnership in this project with us and the state and now the federal government to really look at these children and do a better job with taking care of them. So thank you to all of you for your part in this. We do appreciate it. The negotiations were very touchy at times, but we were able to work through the issues together to get to a good result. I think everyone can be very proud of. Thank you.

**Katz:** Thank you, lisa.

**Francesconi:** Kenny, you bring up one question. And this is a terrific agreement, which i'm going to support, but you mentioned that that million dollars, you know, saved in tax increment could buy a park. Well, the million dollars spent in the capital fund could develop a park in wilkes community group or some other place. Now, you mentioned that there's a savings of \$300,000 in the tax increment portion. From a 1.2 to 9 --

**Saltzman:** The commitment was up to 1.2.

**Francesconi:** How much is actually going to be spent?

**Asher:** On the crc, 954,000.

**Francesconi:** Are you open to some talks, 300,000 additional being taken from the general fund portion?

**Asher:** Actually, the 1.2 was never money that was committed. That was a number -- a paper number that we were going to honor if we had to get up to that amount.

**Francesconi:** That was the same understanding on the million from the capital fund. It was going to be a top ceiling. It wasn't -- I clearly remember this.

**Naito:** I might speak to that. I don't know if it will be helpful or not. But in part of the negotiations and the reason the county then came down from the 1.2, one of the critical negotiating points was this potential community center. Which would have been a portion of the existing building that's out there that would be redeveloped under phase 2 of the proposal. In running through the numbers, neither the pdc or the community could predict their use for that or if that was the right location for that property, and as we looked at it potential foregone rents from that property then the rent base -- it's a complicated project, but the rent is the basis for the operational costs that we receive to run the children's portion from the second building. And so in looking at it, it was determined that from the county's perspective we would look at a lesser amount of funds, push back on the project to try to get savings to bring it down within that, which is going to be very difficult to do, and -- but we've agreed to make that commitment. It might even take additional money than we had projected now from the county's side. We don't know that yet until we go out for the bids on the project. So I know that doesn't answer your question exactly, but that was part of the negotiation, to give us flexibility on the operational side of it.

**Asher:** Just to follow up, commissioner Francesconi. I'm not willing to say at this time that we have saved \$300,000 that we could then put to the use of a park, because we don't feel like we've saved \$300,000. We feel like we have just obligated ourselves \$954,000, but I think more importantly we are committed to get a park built for this community in the gateway district in the

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very near term, and in fact are in negotiations right now in tying up a two-acre site. So there will be early resources put there. As to the \$1 million coming out of the cip, I don't think pdc can speak to that. That's a separate agreement. I think it's before the council in addition to the iga between the county and the commission. Is that clear?

**Francesconi:** Yes.

**Katz:** Okay. Thank you.

**\*\*\*\*\*:** Thank you very much.

**Katz:** Anybody else want to testify on this? All right. Roll call on 1216.

**Francesconi:** I'll just say this once, and the next time i'll just vote aye. When we create tax increment districts is great for gateway and that part of town, and this is a part that deserves it, but just like it takes money away from the county it takes money away from the general fund, which includes parks capital needs. So I agree to this -- agreed to this because of the importance of the children's receiving center, and because of the fact, when we created the tax increment, it takes revenue away from the county, but the solution of taking money away from city's capital projects that affect other neighborhoods is a place we can no longer go. So I guess i'm never ever going to support doing this in the future. But this time I am supporting this. Aye.

**Hales:** Aye.

**Saltzman:** I want to thank pdc and the county for coming to a successful agreement to fund this important project in mid-county -- or in gateway I should say. This will enhance the quality of life for many children who basically come from horrendous situations of abuse and neglect. This provides them a safe place to go, and this also provides a better ability as a city and county to respond to those situations quickly and decisively. So it's a step in the right direction, and I want to thank personally every member of the city council for helping us to come up with a way to help finance the final capital part of this project and I believe -- I look forward to inviting you all to the actual ribbon-cutting when we open this facility, which will be soon, because I said it's under construction now. So thank you. Aye.

**Sten:** This is a very important project, and it wouldn't have gotten done with a lot of collaboration. And I appreciate the pdc got put in a tough spot, but they responded. Thanks to commissioner naito and commissioner Saltzman for I think I of a big step forward. Aye.

**Katz:** Mayor votes aye. 1217.

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

**Katz:** Mayor votes aye. 1218.

**Item No. 1218.**

**Katz:** Kathryn?

**Kathryn Beaumont, Office of the City Attorney:** Before we begin the hearing, I have several announcements I need to make. First i'd like to remind everyone that this is an on the record hearing. This means that you have to limit your testimony to the material and the issues in the record. And it means during the hearing you can only talk about the issues, testimony, exhibits and other evidence that was presented at the earlier hearing before the hearings officer. You can't bring up anything new. This hearing is designed only to decide if the hearing's officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. In terms of the order of proceeding today, the hearing will begin with a staff report by the opdr staff for approximately ten minutes. Following the staff report, the city council will hear from interested persons in the following order. The appellant will go first and will have ten minutes to present their case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. Next the applicant will have 15 minutes to address the city council and to rebut the appellate's presentation. After the applicant, the council will hear from persons who oppose the appeal. Again, each person will have

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three minutes. Finally, the appellant will have five minutes to rebut the presentation of the opponents of the appeal. The council may then close the hearing and deliberate. After the council has concluded its deliberations, the council will take a vote on the appeal. If the vote is a tentative vote, the council will set a future date for the adoption of findings and a final vote on the appeal. If the council takes a final vote today, that will conclude the before the council. Finally, a few other guidelines for the hearing. Again, this is an on the record hearing and the evidentiary record is closed. Again, you have to limit your remarks to arguments based on the record compiled by the hearings officer. If you believe a person who addressed the city council today improperly presented new evidence or presented a legal argument that relies on evidence that's not in the record, you may object to that argument. Finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to city council. If you believe another person has raised issues today that were not raised before the hearings officer, you may object to the council's consideration of that issue. And that concludes the opening remarks.

**Katz:** Okay. Does everybody understand with regard to new information? In your appeal, you covered a lot of issues that I assume went before the hearings councilor. Hearings officer. So I think you'll be all right, but anything else beyond that is not -- may not be presented to the council. All right. We'll have a staff report.

**Eric Engstrom:** Mayor Katz, commissioners, my name is eric engstrom.

\*\*\*\*\*: We can't hear.

**Katz:** Get closer to the mic.

**Engstrom:** I'm eric ingstrom. I wanted to make a brief disclaimer before I start. That is the two planners that actually worked on this case are -- one has left the city and the other is on a leave of absence, so i'm not the planner who worked on the case. I've brought the record with me here and have reviewed it fairly thoroughly, so I believe I am up to speed, but in case I miss something that's why. I guess i'll --

**Katz:** Speak right into the mic. Your voice is low and we are at maximum. Okay.

**Engstrom:** This proposal is in the glendoveer plan district, which is in outer northeast Portland, as you can see on the map. This is a map of the surrounding area. The site is in the center. And I apologize if you can't see on your hard copy. It's the -- one of the larger lots in the center. It appears in yellow on the map above. You can see that the area is single family residential development primarily. The hearings officer recommended approval with conditions for the three-lot subdivision with a private street. He also recommended approval of the requested adjustment to lot depth. And one of the conditions of the lot depth approval was some landscaping along the perimeter of lot 3. The zoning in the area is r 7, which allows single family dwellings on lots of -- normally allows single-family dwellings on lots of about 7,000 square feet, with one dwelling per 7,000 square feet of net site area, however this site being in the glendoveer plan district there are specific requirements that require 7500-square-foot lots that supersede the normal base zone of r-7 here. The tentative site plan is also on this slide, and you can see it's a three-lot subdivision. Lot 1 is the closest to the street or 143rd now. Lot 3 is the farthest lot in. I'm going to run fairly quickly through the slides to give you a sense of what the site looks like. This is a view of the site from northeast 143rd. Rear, backyard portions of the existing site. This is in the front yard, again, looking north from the driveway. One thing to note here is that the front yards are set fairly far back from the street and consistent with the glendoveer plan district requirement. That's the other special requirement in this plan district, is a 30-foot front setback, which is larger than the normal r-7 requirement. Looking south from the front yard. This is a copy of the tentative site plan. There's an existing house on the lot. And I believe it's the applicant's proposal to relocate that house to lot 1, which would essentially be moving that house forward towards the street to fit on to lot 1. The street would then be on the -- on the south side of the property, and end in a turnaround bulb.

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**Katz:** Let me see if I understand. On lot 1, will the front of the house face 143rd or will it face the private street?

**Engstrom:** Given the shape of the house, i'm assuming the front would actually face 143rd, but i'm not -- i'm going to defer to the developer on that. I'm not certain where exactly he's going to put the house.

**Katz:** Okay. Whoa, whoa.

**Engstrom:** I'll let the developer respond to that. The approval criteria in this case are found in title 34 and titles 33 of Portland city code, and also include the state transportation planning rule. Specifically in title 33 the adjustment approval criteria in 33.805 apply. In 34, the principles of acceptability, 34.50, 34.60, the design standards. 34.65, solar access requirements. 34.70, improvements are also applicable.

**Katz:** So let me interrupt you just for a second. If -- is applicable, in if the residential zone the proposal will not significantly detract from the livability or appearance of the residential area?

**Engstrom:** Yes. That's part of the adjustment approval criteria. That criteria is applicable to the requested lot depth adjustment on lot 3.

**Katz:** Okay.

**Engstrom:** This is a summary of the appeal issues raised by the appellant. I'm not going to go into them in detail. I'll let them address them. But there's a concern about the the character of the area. There's a concern about mitigation for the requested adjustment. There's a concern about the front setbacks on lot 1. And also the setback facing 143rd. There's a concern that the proposal fails to consider the historic development pattern in the area, and specifically the area was actually part of a special zoning district originally that predated the county zoning, and then was incorporated into the county zoning and later incorporated into the city code through the adoption of the glendoveer plan district. So there's quite a history of zoning here. There's a concern about a private waterline to an adjacent lot, and then concern has been raised about solar access requirements. Whoops. Wrong way. I wanted to point out one technicality about the lot depth request. And that is the way we measure lot depth is from the center of the front lot line to the center of the back lot line in a straight line. And in this case the front lot line is the short segment that fronts on the private street tract, and the back lot line, which is the one most parallel to the front lot line, is the longer, which is also currently the back lot line of the current lot. Because of the way we define that lot depth is measured in a way that might not be obvious to some people looking at a square lot, and assuming you would measure it one way and the other way. Dimensionally the lot is actually about 60 feet by what looks like about 130 feet with some sliver off to the side where the tract is. The dotted line around the outside of the site plan on this slide is the current setbacks on the site. So that would be 30 feet in the front, ten feet on the sides, and 15 on the back. This slide shows what the setbacks would be, assuming this subdivision was approved. And the important thing to note here is that the definition, because of the zoning codes, definition of front lot line, the front lot lines then switch to the new private street. And the definition is that when you're on a corner you choose the shortest of the two street-facing lot lines, and that becomes the front lot line. Only if the lot -- if those lines are equal do you get to pick one. So in this case by definition the front lot line and the front yard setback is measured from the new private street on lot 1. I know that's one significant concern the neighborhood has. It's also important to point out that under the new requirements the setbacks from the north on lots 1 and 2 would actually increase over what we are now because those would become rear lots. Rear lot lines that is. What i'd like to do now, I have a couple other slides that go into some options you may have, but it may be at your choice more beneficial to hear from the neighborhood at this point and then come back to me with specifics about what code options you might have and depending on where you're going. I'm also happy to continue if you want me to do that.

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**Katz:** Well, why don't you continue so you give us some inkling of what you've been thinking about.

**Engstrom:** Sure. The adjustment of lot depth on lot 3 -- and you mentioned this, I think, earlier -- that one of the criteria is whether it detracts from the livability or appearance of the neighborhood. And it's important to point out that this is related to the lot depth adjustment. And I know that the appellant's statement has attempted to relate this criterion to the situation that's on lot 1 up by 143rd. It's our typical application of this code is the we would not apply the adjustment criteria to another unrelated aspect of the project. We would apply the adjustment criteria to the subject of the adjustment. And so it was opdr's positions and the hearings officer's position that the adjustment criteria don't apply to whether the change in front lot lines on lot 1 affects character of the neighborhood. That applies to whether the narrower lot depth on lot 3 affects the character of the neighborhood. Another one of the approval criteria for the lot depth adjustment on lot 3 was whether the proposal equally or better met the purpose of the regulation to be modified. And related to that, one of the findings the hearings officer made was that essentially that the lot is not all that different from the standard when you consider the way we measure lot depth as kind of creating a strange situation there. By that I mean that the lot's actually 60 x 130. Another one is whether the lot depth preserves the overall character of the developed neighborhoods by assuring that new houses will generally have the same size lots as the surrounding built-up area. Opdr typically applies this with reference to -- and the word "built-up" is important there, because we apply this criteria against what the area's planned for, not what it currently is in some cases. And so if an area is underbuilt relative to the comprehensive plan and the zoning code we would look at what the area's planned for relative to the request, not if -- otherwise we'd be -- have a difficult time ever approving any adjustments if the surrounding area has oversized lots. So that's one thing that's been raised by the appellant as well, I believe. And on that note I wanted to just show the slide of the surrounding area again and the site is in the center. And the site right now is about 27,000 square feet, which is substantially larger than the requirement in the -- even the glendoveer plan district requirement. So we would not, in applying adjustment criteria, usually make -- have oversized lots just because the surrounding area is oversized. And this again is just the definition of the front lot line. One of the things the appellant has raised is whether -- is that one of the criteria is that a land division shall conform to the comprehensive plan and shall take into consideration preliminary plans made in anticipation thereof. And this criteria continues on to talk about street plans and street connectivity. And our typical application of this requirement would be to reference the zoning code. The zoning code was adopted to implement the comprehensive plan. And so if a proposal meets the zoning code it is assumed, then, to be consistent with the comprehensive plan. And that's how we typically make this finding. The appellant is asking you to apply that much more broadly and ask us to make specific findings on the comprehensive plan.

**Katz:** Are you finished?

**Engstrom:** Yeah. There's one other approval criteria that may be raised, and that that is that the land division criteria have a -- an approval criteria related to lots and parcels that talks about the lots created shall be appropriate to the area and that also may come up.

**Katz:** All right. Let me ask another one that will come up with regard to the glendoveer plan district. You didn't mention anything about that.

**Engstrom:** There's no specific approval criteria in the glendoveer plan district. It just has a couple extra developmental standards, one being the extra front lot setback and the other being the larger lot sizes. So other than implementing those development standards, which are the clear and -- clear and objective code items, there's no additional criteria in the glendoveer plan district for a land division.

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**Katz:** All right. There was also some discussion about -- whether there was written or oral communication that no alterations to the glendoveer district plan will be made. How do you respond to that?

**Engstrom:** Well, I guess it was our position, and the hearings officer agreed, that the glendoveer plan district requirements were met because the -- the front lot standard is met. The disagreement is over -- what people are potentially unhappy about is that the front lot line is now what used to be the side lot, and the side lot is now what was facing 143rd. And I can't speak to whether the glendoveer -- the historic glendoveer zoning or the zoning code ever anticipated that event, but it's clear that corner lots have smaller setbacks in this area as well.

**Francesconi:** We'll hear from ourselves in just a minute, but are folks more unhappy about that, the change of the site towards the other street, or just the division of the property itself into three different lots?

**Engstrom:** Well, having not been the planner, i'm not sure. I would guess on that. I know we got a lot of testimony about that.

**Katz:** We'll hear about that as well. All right.

**Hales:** I guess I want to focus on that. How are we now making the determination about -- in a corner lot -- about which -- which side of the corner is the primary street?

**Katz:** Front door.

**Hales:** How are we making that distinction?

**Engstrom:** The front setback applies to the front lot line by definition in the code. And that's a clear and objective standard, or a definition actually.

**Hales:** Right.

**Engstrom:** The -- when you have two front lot lines, the definition of the front lot line says that it's always the shortest of the two if they're different lengths. If they're equal then we get a choice, but in this case by definition the front lot line is the shorter one.

**Katz:** So is that in response to the earlier question that I had, is where -- where is the front going to be?

**Engstrom:** Yeah. The front by definition is facing the new street.

**Hales:** Not so much by definition -- well, by definition and by dimension.

**Engstrom:** Yeah, yeah. A different plan may have a different result, but that's what we got.

**Hales:** All right, okay.

**Katz:** And it's the shortest?

**Engstrom:** Yes.

**Katz:** Okay. All right. Appellants, you have principal appellants, you have ten minutes. Who are the principal appellants? Who's going to start? Okay. Introduce yourself and then go ahead.

**Ross Monn, Chair, Wilkes Neighborhood Association:** I'm ross mann, chair of wilkes neighborhood association. I live on northeast fargo circle, Portland. Because of all that, things have probably changed, but I really don't think in 1947, when ascot zoning was set in place that they ever intended a private street to go in and that become the front lot line. I think it was always assumed that the main streets would be the front lot lines. And so a special place was created in 1947 when ascot zoning was put in place, and then in 1989 when east county was annexed and the Portland-gresham boundaries were established. Glendoveer plan district was put into place with the city of Portland. And they used all of the previous ascot development standards, which you understand now -- I mean, we have discussed the 7500-square-foot, 70-foot minimum with it -- minimum lot with it, with the large setbacks in the front of 30-foot, ten-foot side, 15 front. And there was a question -- what was that question that we were trying to ask? Yeah, that house -- that house that you asked if it was going to be -- no. He's going to turn it so that the side is ten feet from 143rd.

**Katz:** Got you, right.

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**Monn:** So to answer that question and get that on. Then I think everybody knows what the glendoveer plan district is. And the purpose of it was to ensure that a special development patterns fostered by ascot zoning and succeeding zoning provisions established by Multnomah county are protected and continued following the annexation. The hearings officer led us -- you know, he, in his report, and I will just take a few quotes from it, he says this proposal will in fact have significant impact upon the livability and particularly on the appearance of the residential area. Another quote -- by creating the proposed private street, what is now the front yard of this property will be converted into a size yard with a required setback of only ten feet from northeast 143rd. This will allow the residents on the proposed lot 1 to be thrust forward to within ten feet of 143rd. Far beyond the setbacks of the existing residences on this block. Locating a residence within ten feet of 143rd will almost -- when almost all remaining residences on the block are set back in excess of 50 feet, will significantly alter the appearance of the residential area. He also says, I would be more comfortable with the -- with applicant's proposal had he proposed establishing a side yard setback along 143rd avenue more similar to the existing front yard setbacks along that street. Or at the least, more similar to the 30-foot front yard setbacks required in the glendoveer zoning. Thrusting a residence on lot 1 to within ten feet of 143rd avenue, right away will significantly alter the current appearance of this residential area. He reiterates that. However, when evaluating adjustment requests, I do not believe I am empowered to evaluate the overall effect of the entire proposal on the existing appearance of the residential area, rather I believe I am only authorized to examine the effect of their requested adjustment itself. And I have code numbers. 33805. This criteria was not met in the adjustment. The required depth of the new lot 3 from 90-foot title 33 lot size standards to 68-foot. The purpose of the lot size standards is to help preserve the overall character of a developed neighborhood. If a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area. This criteria is not met because it does not meet the standards set in chapter 33.350 of title 33. Planning and zoning for glendoveer plan district. The purpose of the district is stated in the code as, quote, the regulations of the plan district are intended to ensure that the special development patterns fostered by ascot zoning and succeeding zoning provisions established by Multnomah county are protected and continued under city zoning regulations following annexation. I'm sorry, that's a repeat. I didn't realize I had done that.

**Katz:** Just give her enough time.

\*\*\*\*\*: I'm trying to. How much time do I have?

**Katz:** Go ahead, go ahead.

**Monn:** I know, I am talking fast. Any impacts resulting from the adjustment are mitigated to the extent practical. The hearings officer notes that in creating three lots on this site could negatively impact adjacent properties. Mitigation suggested in a three-foot-depth landscape area buffer. This does not mitigate the impact of the proposed land division. Minimum density. 34.50. The hearings officer finding addresses only the minimum lot area of the glendoveer plan district and does not respond to the front and side setback. Ensure -- to ensure the special development patterns fostered by ascot zoning. These requirements must be severely adjusted in order to provide three lots and thus the minimum density standard for -- set for this property should not be allowed. Further, extension of streets. The hearings officer finds that the provision of a street -- private street on this property meets this criteria. The private street being developed does not extend to the full length of the boundary line of the tract, and does not meet the standard. Easements. The rockwood water district services this area, not Portland. And the property behind 142nd will be placed under the private street. Their access. Because there's no water access from 142. It runs from 143 through this particular property to the homeowners. I'm sure they'll speak today. The private easement is recorded as part of the deed of that property owner and could result in utility interruption and/or repair costs by the neighbor. The size, width, shape and orientation of lots and parcels shall be appropriate for the location of the land division. That's 34.60. This land division is not appropriate

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for this location. The hearings officer suggested the existing structure shall be moved to meet the setback requirements of the glendoveer plan district but that can only be done to turn the structure to face the public street in order to avoid the 30-foot setback requirement. The device used to meet this requirement is to change the 30-foot setback to the ten-foot side setback. Solar design standards. 34.60. At least 80% of the lots in this development subject to this ordinance will comply with one or more of the options in this section. Basic requirements. The standard is not met only two of the three lots in this proposed land division meet the basic requirements. Protected solar building line option. None of the lots meet this standard. Performance option. Lot 3 does not meet this standard. 34.65. Adjustment to solar design standard. An existing public easement or right-of-way prevents given streets or development from solar access. There is neither an existing public easement or right-of-way on this property, and thus this criteria is not met.

**Katz:** Okay.

\*\*\*\*\*: You're ready to go?

**Barbara Woodside:** Okay. My name is barbara woodside, and I live across the street, kitty corner to this site. The glendoveer plan requires a lot depth of 90 feet. This development took a rectangular lot with an original depth of 59 feet and subtracted five feet to accommodate a private street. Special calculations then determined the depth had increased by nine feet. Now an adjustment for a lot depth of 68 feet is being requested. Lot 3 must not exist. It's mere existence squeezes three lots into an area that does not have the space to meet the glendoveer code. It violates approval criteria b which states, if in a residential zone the proposal will not significantly detract from livability or appearance of the residential area. The hearing officer states in his decision that this proposal, taken in its entirety, will in fact have significant impact upon the livability and particularly on the appearance of the residential area. He acknowledges the uniform appearance of the existing residences. Most of these residences have setbacks in excess of 50 feet. The house to the south of the development has a setback of 80 feet. While the house to the north has a setback of 75 feet. Lot 1 will be in front of both of those houses with a side setback of ten feet from 143rd avenue. This will sorely stick out as an eyesore. I did a picture to kind of demonstrate what i'm talking about. Allowing lot 3 to exist causes private street to exist. This private street rotates lot 1 a quarter turn to face the private street. The glendoveer plan's purpose was to create lots with uniformity in relation to public streets, not private property. Approval criteria a states granting the adjustment will equally or better meet the purpose of the regulation to be modified. The regulation being modified is the glendoveer plan and its purpose is not being met. There's no guarantee of any likelihood that this private street will ever become public. The hearing officer states he does not believe he is empowered to evaluate the overall effect of the entire proposal on the existing appearance of the residential area. He states, I believe I am only authorized to examine the effect of the requested adjustment itself. Granting or denying the adjustment will determine whether lot 3 and all of its effects will exist. Certainly the council has authority to examine the overall effect of the existence of lot 3. The devastating effects are too large to turn a blind eye to. Portland takes pride in the diversity of its neighborhoods. The individual neighborhood planned districts provide regulations to preserve the character of neighborhoods. They address aesthetically pleasing environments to promote desirable residential areas. There are many other reasons why we oppose this development. All of these issues point toward this proposal as not preserving our neighborhood's character. It does not blend in an equal way. It will detract from the flow of continuity and livability as an eyesore. It has an obtrusive presenting character, which cannot be masked. It will make our neighborhood an undesirable area. This site could be developed as a flag lot in a fashion that would enhance the neighborhood. This would preserve the minimum 30-foot front setback facing 143rd avenue. This would more closely equal the rest of the lots on the street while still increasing density. This has been a long-established, well-maintained area with little crime. We don't wish to see it deteriorate. There is no need for such rigid density requirements that

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an established neighborhood's appearance and livability must be destroyed. Please see the devastating effects and rigidly uphold the glendoveer plan code as promised when we were annexed. I also have pictures --

**Katz:** Go ahead, quickly.

**Woodside:** -- that were submitted to the hearings officer. These are also setbacks of the houses along the street. And those are pictures from the house from the south and the north.

**Katz:** Okay. Questions by council? Go ahead.

**Saltzman:** Do I understand that your opposition to the formation of lot 3 is based upon the impact it would have on the setback of lot 1? I mean, in other words, if there was a way to maintain a 30-foot setback on lot 1 facing 143rd, would you have a problem with the creation of lot 3?

**Woodside:** Well, yes. There's other reasons that were stated at the hearing -- at the officer's hearing. The street will be going over the water pipes of the residences in the back are so they won't have access to them if they need to. Also our street is very -- is very variable in width. At some places it goes down to like -- oh, I don't know -- 25 feet, and others it's like 30. And that's going to force parking, having three residences in that area, will force parking on to the street. We have many children that play in that street. And we have a lot of people that speed down the street, because it's a very long street. It's not a normal just with blocks. It's one long street. So people go really fast. We're concerned about the children, because of all the parking. And we'd prefer to see a flag lot that would -- it's like you're cramming three houses into an area in this area where the lots are oversized. We prefer to see a flag lot. Did I answer your question?

**Saltzman:** Yeah, you did. I guess I want to push it a little further. If the 30-foot setback from 143rd were maintained, your primary -- your primary point's against the formulation of lot 3 then be parking impacts and impact on the private waterline. Is that --

**Woodside:** Plus, the lot is too small. Lot 3 doesn't meet -- I mean, it's actually 59 or 54 feet on one side. I don't know how you're going to get a house in there.

**Saltzman:** I guess I meant to tie that into the general neighborhood. That seems to relate to the setback on 143rd. I think you've answered my question.

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

**Saltzman:** Yes.

**Katz:** Any other questions? Thank you. All right. Karla?

**Katz:** All right. Come on up. You all have three minutes. There's a little clock on the side of the monitor that will give you a clue. Then you'll hear a little sound, little bell, go off. And then i'll cut you off.

**Katz:** Who wants to start?

\*\*\*\*\*: Go ahead.

\*\*\*\*\*: I will.

**Katz:** He will. Bring the mic -- sir, bring the mic closer to you so we can hear you. Okay.

**Ray Taraba:** My name is ray taraba. I am opposed to the proposed development of the property located at 1739 northeast 143rd for the following reasons. This property is most suitable for a single-story, single-family ranch-style residence conforming to the existing residence in symmetry.

High density dwellings are detrimental to our environment namely by overcrowding, noise, pollution, littering, parking problems, family disputes, infringement, blocking our views of the trees, mountains, blue skies and sunlight. Causes a reduction of our open spaces and livability, circumvents the policy by the glendoveer plan group. Thank you.

**Katz:** Thank you.

**Mary Webster:** I'm mary webster. And I live on 142nd. And I will be viewing this new congestion. And I don't care to do that. I moved there 14 years ago because of the neighborhood and the large lots and the openness that we have. And I know what rental property is. And these are three rental properties. And I know who a lot of them move into those homes. And i'm a

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taxpayer there. And I just oppose -- i'm just opposed to this development and any other development of that nature. Thank you.

**Katz:** Thank you.

**Sandy Fairstrand:** My name is sandy fairstrand, and I live at 1600 northeast 137th avenue with my husband, my 5-year-old daughter, and my 91-year-old mom. When we bought our house in glendoveer approximately nine years ago, one of the things that attracted us to the area was the beautiful, large lots with many trees. Our lot alone has ten trees, three of which are old majestic maples, the smallest has a circumference of 75 inches. In regards to the trees, just a side note, the people across the street, who couldn't be here due to employment obligations, have ten old-growth trees on their lot. Our house faces the street. And our front yard is 30 feet from the street. I feel houses that face the street give a friendly, welcoming feeling. We do not have an official crime watch in our neighborhood because I suppose i'm it. I'm a stay-at-home mom. Therefore I know the comings and goings of most of the neighbors. If our house faced to the side of our lot, not only would I not be able to see the other houses, this type of housing gives a very unfriendly feeling. We bought in the glendoveer area because it was an older, well-established neighborhood and it was affordable. There are 13, soon-to-be 14 children under the age of 14 on our street. All of these families have lived in the present houses at least as long as we have. Two of these families are second-generation families, which speaks loudly for our neighborhood as it sits now. Please don't make decisions that will change the characterization of our neighborhood.

\*\*\*\*\*: I agree.

**Katz:** Go ahead.

**Scott Farestrand:** Hi. My name is scott farestrand. I live on 1600 northeast 137th avenue. And I just want to direct my comments to the livability of the neighborhood. Where we live, on 137th, we're very similar to what they have there, the houses that are deep setbacks, and they're on a line. You go out your front door and you can all your neighbors, all the way down the street. And it makes for a really good neighborhood. We know all of our neighbors by name. The way the houses are set up there make it much easier to be friendly. The city has made all kinds of codes trying to encourage this kind of thing by moving -- moving garages back instead of having them out in front of the house. We've done lots of things in this city to make neighborhoods livable. And taking this section of this particular street and turning it sideways and putting three houses in there where each of the front of those houses do not face the majority of the neighborhoods, they block the view of the current neighbors from being able to see the neighbors that they've seen for years. It changes everything. And not only that, but the decision that you make about this one I think is much more important, because if you looked at that map you'll notice that there are three more -- two more lots very similar in size. Now, if you approve these three houses in, how are you going to tell the people next door that they can't have three houses? And are you going to tell the people three more lots down that they can't have their three houses? All of a sudden you've taken three houses and turned them into nine, because those people aren't going to want to live there anymore. If someone destroyed your view, your neighborhood, the lifestyle you've had, you essentially change the characteristic. And it's not today's decision that really matters, you're making more than one. We don't like flag lots -- I don't like flag lots that much because I think that's out of the characteristic, but I wouldn't argue as vehemently against those as I will this. This will change the characteristic not only of 143rd, 142nd, 137th and on and on. And this is a good neighborhood. It's an old neighborhood. And we don't need it to be a new neighborhood. People move to old ones for a reason. And we want to keep it that way. Thank you.

**Katz:** Thank you. No, no, no.

\*\*\*\*\*: Darn.

**Hales:** You can have a good applause line, you just can't have applause.

**Katz:** Yeah.

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**Steve Johnson:** Mayor Katz, members of the city council. My name is Steve Johnson. And I appreciate the opportunity to appear before you today to address this issue. My wife Karen and I live at 1744 Northeast 143rd Avenue located directly across the street from the proposed Jack Estates. We moved into this home in 1980 because it offered us a large lot at an affordable price, hall marks of the Glendoveer neighborhood. Over the years we've enjoyed the benefits of our large lot. We've been able to add a new master bedroom and family room to our home. Ample room for vegetable and flower gardens and had a safe rooming place for our children to play with their friends. Many of our neighbors share these feelings about the benefits. I oppose the plan you have before you and spoke against it at the August 6th hearing. I've recently read the decision of the hearings officer and still believe this proposal does not meet the criteria stating that it shall not significantly detract from the livability or appearance of our residential area. I believe it will. On page 5 of his decision, as has been stated before, he said, this proposal taken in its entirety will in fact have significant impact on the livability and particularly on the appearance of the residential area. In the three paragraphs that follow this statement he concisely details the key problems with the proposal, but concludes that he's not, quote, empowered to evaluate the overall effect of the entire proposal on the existing appearance of the residential area. To summarize what he's saying, lot number 3 does not meet the lot depth requirements of the plan, but since it's the back lot the appearance and livability criteria don't matter. Thus an adjustment in the lot depth requirement seems acceptable to him. On the other hand, even though lot number 1 clearly violates livability and appearance criteria, he won't consider that factor because lot number 1 meets all of the lot size standards. I believe he made his decision in good faith based on his interpretation of the limits of his decision-making power. But I'm here today in the hopes that you interpret your decision-making power as broader than he views his. I say that because I think that somebody representing the city needs to take the broader picture into consideration. While the hearings officer has done an adequate job of considering the fine points of the city zoning code, somebody else needs to step back a bit and consider the impact of the entire three-lot package of the Jack Estates. This impact -- the impact is this -- the three lots are crammed in so closely that basically all of lot number 1 could fit in front of the houses located on either side of the property. Since the back line or the western boundary lot of number 1 is only 70 feet off of 143rd, and the fronts of the neighboring houses are set back 75 and 80 feet from 143rd. Lot number 1 would stick out like a sore thumb. We do not oppose all development in our neighborhood, and we'd accept the two-lot subdivision of this property. But the proposed Jack Estates go too far in the interest of creating density and it would change the character of our street. I just also wanted to mention, in the last 20 seconds, that we have over 500 signatures opposing this development and quite a number of the people are here with us today, and is it okay to ask them to stand up?

**Katz:** They can raise your hand.

\*\*\*\*\*: Raise their hand, okay.

**Katz:** Thank you.

\*\*\*\*\*: Thank you. I appreciate the opportunity to speak on this matter.

**Katz:** Thank you very much.

**Bonnie McKnight, Co-Chair, Russell Neighborhood Association:** Good afternoon. My name is Bonnie McKnight. I live at 1617 Northeast 140th. I'm a resident of the Glendoveer plan district and appear in that role today. I'm also co-chair of the Russell Neighborhood Association. The Russell Neighborhood Association supports this appeal as well. And you have a letter from the Hazelwood Neighborhood Association supporting the appeal. In the adopted Title 33 zoning code of the city of Portland, the Glendoveer plan district is recognized to ensure that the special development patterns fostered by Ascot zoning and succeeding zoning provisions established by Multnomah County are protected and continued under city zoning regulations following annexation. The code language goes on to describe minimum lot size and setback requirements and ends in less than half a page.

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This brief set of guidelines makes the special development patterns the defining framework for the otherwise normal technical requirements. The hearings officer, despite stating several times that the proposed three-lot development at 143rd was out of context with the community, addressed only the fact that the 7500 square foot lot size requirement was met. The 7500 square lot size is not the purpose of the glendoveer plan district, nor was it the purpose of ascot zoning pattern, which to be ensured by the district. We know that an ascot zoning district was formed by Multnomah county around 1950 prior to the county having overall zoning of any kind. The first Multnomah county zoning ordinance passed in 1953. The interim county code adopted in 1955. And the permanent Multnomah county zoning ordinance 100 adopted in 1962 reflect the protection of the earlier patterns adopted by the appointed ascot zoning district board. All of these documents are consistent in that they note a front yard orientation from a public street. Earlier versions established the front setback by its orientation to immediately adjacent residences. In fact, an earlier document of the ascot zoning district further clarified the intent by stating, quote, that no part -- no building or part of a building other than a flight of stairs not to exceed five steps shall be closer to the front line -- the front street line than 30 feet. It is clear that the intent of the ascot zoning district is to protect the property values within the district by preserving the spacious view of the neighborhood. In fact, I would refer you to a decision by your own -- one of opdr employees in 1999 which denied a proposal and said that glendoveer plan district has carved out special standards to preserve a certain character for the neighborhood. This includes larger lots, bigger side and rear setbacks, and very deep street setbacks. All this affords residents a greater sense of open space around their homes. The physical appearance of the proposed development -- in this case in 1999 -- in the glendoveer plan district and the existing character and livability of the r-7 zone are in conflict in this proposal. And it was denied. Did not come to you for appeal. We believe --

**Katz:** Excuse me, bonnie, denied by the hearings officer?

**McKnight:** Yes. And it was not appealed. It was a notice of a decision, which the proposal was denied.

**Katz:** I'm going to give you another minute, but before I do, kathryn, are you ware of that case?

\*\*\*\*\*: I have it here.

**Katz:** Is it a similar case? You don't know that.

\*\*\*\*\*: It's a two-lot development, not identical, but the point is that the glendoveer plan, everything being equal the adjustments could have done it in other areas, but they couldn't do it in glendoveer.

**Katz:** Did you finish?

\*\*\*\*\*: No, I didn't.

**Katz:** Finish your thought. I interrupted you.

**McKnight:** The proposal we've appealed would form a third lot by turning the first building away from the public street and this -- thus permitting it to be set back ten feet from that street. Without this clear violation of the pattern of ascot zoning, which the glendoveer plan district is formed to protect, a third lot could not be formed. A depth adjustment to the zone minimum would not have been required and the artificial designation of a corner lot through the use of a private street would not have triggered the front setback.

**Katz:** Your time is up, bonnie. Finish your sentence.

**McKnight:** We believe the creation of the third lot generates all of the other problems. The adjustment being requested would be the first exception granted to the conditions of the glendoveer plan district since the formation by the city of Portland. We believe that the adoption of the district as part of the city zoning ordinance and comprehensive plan was your commitment to protect the special development patterns --

**Katz:** Thank you, thank you.

\*\*\*\*\*: We ask you to support our appeal.

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**Katz:** All right. Anybody else who didn't sign up but would like to testify? Okay. Can we have staff come back up again?

**Francesconi:** How about the applicant?

**Katz:** Oh, i'm sorry. The applicant. I wanted to ask the staff a question, but I can wait. You have 15 minutes.

**\*\*\*\*\*:** I definitely don't need that.

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

**Dale Marks:** My name is dale marks. PO box 565, gresham, Oregon, 97030. I'm the applicant's representative and I have prepared the plan and the narrative and the outline and all the required materials that the city of Portland, opdr, and -- required of us to prepare this plan. I've met with the neighborhood association and discussed the issues that they're concerned about. And I really -- we're just -- we don't know what more we could do to help them and also the applicant wanting to move the house towards the street and allow room enough to build the two lots -- develop the lots in the back. As i've mentioned to the neighborhood association, they're meeting with standards, and this pretty much a problem that should have been resolved with the city prior to the approval of the glendoveer plan. The glendoveer plan district does allow for extra room for open space, you know, with a larger front and side and rear yard setbacks. And also larger area. The issue here is, this isn't setting a precedent because this has been done just the few blocks away on 134th between halsey and san rafael. And one thing I think is important to note is that the house itself will be moved forward towards 143rd, so the -- say, for example, the front door that exists today is still facing 143rd, whereas the definition of the front yard is going to be from the new private street or from the proposed private street. So it won't be like if you're looking at a new building or new structure and you were just looking at a wall or a wall with one window as a lot of new development exists. There's been a request for additional right-of-way. The right-of-way through -- on 143rd originally started out as 40 feet. This street does not have any improvements. People have been adding a little pavement on each side of the street up and down the street. It's a lovely street, but I don't believe hardly anybody actually knows where the right-of-way of the street actually occurs, and therefore the setbacks can be very difficult to ascertain from the existing homes. But they definitely do also set back a lot further than what would -- what this development would propose or ensue. We've worked very hard with the city in trying to meet the standards of the area, and that's what we believe we've done. We can relocate the house so that with the -- if you include the five feet that is going to be taken for additional dedication along 143rd, there could be 17 feet -- plus 17 feet, which could be from the new right-of-way line, the front of the relocated structure would -- would be roughly 22 feet from the original right-of-way line, and it would have the feet facade as the rest of the homes that are up and down the street. Let's see. That's pretty much all I have to offer for the applicant.

**Katz:** Questions?

**Saltzman:** Yes. So if I understand you correctly, you're saying that in moving the house you would still maintain -- if you include the dedication of 22-foot setback -- was that from the front door, or that sort of dogleg part of the house?

**Marx:** That would be from the dogleg part. That's kind of a bedroom.

**Saltzman:** 22 feet?

**Marx:** Yeah. And not from an actual -- the majority of the front of the structure. So the front of the structure is going to be moved easterly towards 143rd. And it's allowed, if -- with the standards that exist, it's allowed to get as close as 10 due to the private -- proposed private street being called the front lot line. And that is quite -- quite an important issue in this appeal.

**Saltzman:** And you also -- the front door will continue to face 143rd?

**Marx:** That's correct.

**Saltzman:** I assume the driveway will still exist?

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**Marx:** The garage will probably be turned around for access off the private street. So you're actually minimizing -- well, you're not minimizing, but you're maintaining one egress-ingress point along 143rd for these three lots.

**Saltzman:** So that existing driveway would then go away?

**Marx:** Yes.

**Saltzman:** Okay.

**Katz:** Further questions? All right, thank you. Anybody else in support of this proposal?

**\*\*\*\*\*:** One against all.

**Katz:** Yeah, I guess you are all alone. All right. Now staff, come on up.

**Moore:** Rebuttal.

**Katz:** Rebuttal. Oh, i've been away too long. Come on up. You've got five minutes.

**Scott Farestrand:** Wow. I won't need that. I just want to -- I want to make sure -- you know, you talked about the 22 feet. I don't know exactly where his measurement lines are, but I want to make sure that that --

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

**Scott Farestrand:** I'm sorry. I'm scott fairstrand again, 1600 northeast 147th. Even if they did move this house 22 feet back, it still is going to detract from the current conditions of the neighborhood. If they say that these -- all these other houses are up to 80 feet set back and you can see up and down that neighborhood, when you -- when you move that thing out, you've changed essentially, again, how people live in that -- in that neighborhood. We walk out our front doors. We see our neighbors. We go talk to them. These people are going to come out their front doors and they're going to see -- well, they won't see the one wall with one window on 143rd. They're going to be right there, when they look to their side. And again, you know, we want to concentrate on that. We want to concentrate on the other lots in the neighborhood that when this happens, it's a big, big, big decision. It's not just this house. It's not just this lot. It's the entire street. And once you change an entire street and if you do degrade from the livability of the neighborhood, then people start to move, prices start to drop, values go down, tax revenues go down, people continue to move out, and the rest of the neighborhood starts to fall apart. Don't want -- you don't want to start putting all this weight and all this pressure on you're neighborhood where people have come to live with the specific purpose of having -- you know, building a family there or retiring there. It's a great neighborhood. And we want to keep it that way. And that's all i've got to say. Thank you again.

**Katz:** Questions?

**Saltzman:** So if the applicant on this lot, or any similar sized lot, proposed to demolish an existing house, and rebuild one house, but 30 -- within -- just meeting the 30-foot setback of the glendover plan district, would you still say that detracts from the livability of the neighborhood and oppose that?

**Scott Farestrand:** Yes, I would. The only thing is there would never be an appeal because nobody's changing any code, nobody's doing any big land division, you know, any subdivision. Nobody's doing anything like that. It would be a lot harder -- I don't even know if we'd get a chance to appeal the decision because nobody would ask for a variance of any kind. We get to ask for this appeal because there's variances. I don't know if that's the truth, but because we can ask for it, because we have the right to do that, and because you've got the authority to interpret everything and make the decisions about how this neighborhood is going to stay, we're here and we're all talking about it. An there's a lot more people to talk about it, but they're working. And, you know, can't be here. So please consider the neighborhood -- that's how we feel. 500 signatures says a lot. These people, whether they're speaking or not, say a lot, and we all mean it. And we could fill the room up if we had more time.

**Katz:** Thank you.

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

\*\*\*\*\*: I understood the rebuttal would come after the final staff comments.

**Katz:** No, no.

**McKnight:** That was not the rebuttal, because I wish to rebut. I understood we have the last word in this process.

**Katz:** You have a couple of minutes to rebut, but --

\*\*\*\*\*: I thought we came after --

**Hales:** That's okay, bonnie.

**Katz:** There's more. Were you supposed to rebut and not him?

\*\*\*\*\*: I raised my hand.

**Katz:** Oh, all right. Come up, bonnie. I'll give you two minutes to rebut.

**McKnight:** Well, this is diminishing as we speak here. First of all, the impact is not a single lot and it's not a single dwelling. The impact is on the character of the neighborhood. The glendoveer plan district was put together to ensure special patterns of development. If you begin to dismantle those patterns of development, it does change the community around it. Three lots is too much. Two is fine. It doesn't prohibit development of the larger lots. It says that unless you have adequate setback requirements within the meaning of the glendoveer plan district, you can't add an extra lot. And one of the things we'll do this year is tighten up that language to identify that. The glendoveer plan district set back all of its space criteria from the public view. The public street. And that's how you get the spaciousness of the area. It's 2128 lots. About 100 of those would probably qualify for as much development as this one does. We want to make sure that the way it is done doesn't dismantle the other 2100 lots that won't be infilled in the same manner. And it's -- again, it's a precedent we don't want to set. 17 feet back from the street is very different than 30 feet from the street. And finally, most of the houses in the area aren't even as close as 30 feet from the street. They're anywhere from 45 to 75 feet from the street. We established those measurements from the utility poles, which is generally close to the right-of-way line. So the fact that the street doesn't go to the right-of-way line did not come into our measurements either. And we did consider that. So we just ask you to recognize glendoveer plan district as a small special area of small houses and big lots and there's a bunch of people who would like to continue living there. And some others who will move in with new families who want that kind of living situation that's affordable.

**Katz:** Okay. Thank you. All right, now staff. I noticed that in the hearings officer's decision, I don't believe he referenced the ascot zoning district. Tell me what kind of standing does the ascot zoning district have in helping us make this kind of a decision. Or does it have any standing at all?

\*\*\*\*\*: I'd like kathryn beaumont to address that after you do, sir. That was my same question.

**Engstrom:** Sure. My understanding is that with the adoption of city zoning, which I assume happened at annexation, that the city zoning took over and replaced any zoning that was there before. The glendoveer plan district was worked out as part of that transition to carry forward to the best of our ability the intent of that ascot zoning. That's how we've applied it. And from this case it's clear that some details of that were not necessarily carried forward in the way that some people thought they might have been in regard to where the setbacks are measured from, but that's my answer. I don't know if kathryn disagrees or not.

**Beaumont:** I would agree with eric's answer. And I would have answered your question the same way as I read the glendoveer plan district it was intended to carry forward the concept of ascot zoning by allowing extra large lots and extra big setbacks in the r-7 zone that was applied. That is rather than having a 7,000-square-foot minimum lot size it's 7500 in the glendoveer plan district. And rather than smaller setbacks, there are the bigger, front yard setbacks, side yard setbacks, and rear setbacks. So there is no other -- as far as i'm aware, there is no other ascot zoning floating out there that applies through the comprehensive plan or through the zoning code. It's what's in the glendoveer plan district.

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**Katz:** So it was folded into the glendoveer planning district?

**Beaumont:** Right. And as eric said, it may be -- may not have fully been in a way that people understood or intended, but it is in the -- what's in the glendoveer plan district is what's there.

**Katz:** Okay. Go ahead.

**Saltzman:** Just on the same point, I guess on bonnie's rebuttal here, it talks about the ascot -- the 1953 ascot zoning district regulations, which state that basically any change in particular architecture or plan to build a building, which would be more advantageous from the standpoint of sales or rent shall not be deemed sufficient reason for the granting of a variance. Does that regulation carry forward into the glendoveer plan district?

**Beaumont:** I've not had an opportunity to read bonnie's rebuttal, but no, I think once the property came within city's boundaries, it's what you find within the city's codes and ordinances and comprehensive plans that controls. I'm not aware of another document out there that would provide different zoning regulations applicable to this area.

**Katz:** Would you also agree -- this was coated and let me read it again. As noted above, it is unfortunate that this proposal will alter the existing appearance of this residential area by altering the rather uniformly large front yard and front yard setbacks, however that effect is not apparently addressable under any of the applicable approval criteria. Would you agree with the hearing officer in that determination? We might not or might, but i'm just asking whether --

**Beaumont:** Having read his report, yes, I would. On a legal basis.

**Francesconi:** See, here's where i'm at, folks. Let me just tell you what i'm thinking. I don't know that we can just use that as a basis legally. And see, folks, we're bound to follow the laws that we have. They're actually bound to us. However, the developer, i'm going to use section 34-60-030, the lots and parcels, and i'm going to interpret the language, the size, width, shape and orientation of lots and parcels should be appropriate for the location and land division and for the type of development, understand i'm going to conclude based on this application and that language that i'm going to vote no on this proposal using that language. Now, if you were going to come back and do more than you did here in terms of this 22 feet as well as the orientation and make more concessions in terms of the lots and parcels, then I would have a tougher time legally on the issue of kind of like the three-lot division, et cetera, but because you haven't done that, based on what i've heard here, and based on the criteria i'm just going to set forth, i'm going to vote no.

**Hales:** Well, I agree with that, if we're going to go -- well, if we're ready, let me make a -- i'd like to make a motion, but I want to preface it. I don't want to make the motion yet, I want to kind of describe some options that I see that are a little different than what we've heard.

**Katz:** Before you make any motion, do that, and we'll get to closure in a few minutes afterwards.

**Hales:** When I first looked at this, I kind of thought this was a small case, you know, because it's three lots, but actually I think there's a small -- and we normally take -- I don't mean small derogatorily. The rest of the council knows i'm a big believer that we don't set -- although this is quasi judicial and we have to follow the rules -- that we don't set precedent like a court does. We're always pushed in the same direction, because we're supposed to, as a council, interpret the code as we see it, but every now and then a case comes along that highlights an issue where we can either start a change in policy or use the director of office of planning and development reviews authority to the code to start interpreting the code differently. I think this is one of those cases. That there's a small way, a medium way, and a large way to look at this case. The small way is to take the criteria and say that the hearings officer -- did the hearings officer make a gross mistake in applying the criteria or is there a fumble, maybe like the one you just described, jim, or a difference of interpretation. We do that a lot. The medium way in this case is to say are we going to give special weight to glendoveer plan district in how the adjustment criteria are applied. And we could do that. And that might do something for glendoveer. But then there's a large way to interpret it. And I think that's what we need to do in this case. On two issues. One, on the hearings officer's decision

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on page 4, I want to refer to this again, because a couple people did. It said, the criterion is if in a residential zone the proposal will not significantly detract, et cetera, et cetera. On the next page, he says I don't believe I'm empowered to evaluate the overall effect of the entire proposal, et cetera. Well, actually, I appreciate our employees being differential to the council. I wish it was always so. But this is one of those cases where -- and actually the hearings officer works for the auditor, not for any of us. But I want them to -- I want the hearings officer to take a broader view. In other words, I would change the language there, in b, in terms of how it's interpreted. If the proposal, as a whole, including the adjustment, won't significantly detract. In other words, it's not just -- don't just look at the adjustment, look at the effect of the adjustment on the whole thing. And I think if we decide this on this basis, I want to actually recommend that the council send a letter to the auditor and the hearings officers and say we want you to look at the whole enchilada when you look at an adjustment. It's not just will the adjustment itself change the world, it's will the project, including the adjustment, accomplish the purpose? And then the second issue -- that's one issue. One issue is do we want the hearings officer to look at the whole thing, including the adjustment, or just at the adjustment? I say the whole thing. But we should talk about that, because that's a policy change. And then secondly -- and this is not a new issue -- there's this issue of whether you can meet the code criteria dealing with streets by creating a private street. And I thought we'd put all the nails in that coffin lid that we needed to, and we haven't. So I would recommend that if we take this larger approach, that the council direct the city commissioner in charge of the office of transportation, and opdr, to instruct the staff to stop doing that. To stop using private streets -- I'm sorry -- stop allowing people to meet code criteria dealing with streets by creating private street. Because I think arlene nailed it in this letter. She said the private street is in fact a driveway. It's an artificial device being created to facilitate -- in her words -- degradation of the plan district, or actually in this case avoiding the intent of the code. In other words if we let people create private streets and then follow the code we make a nullity out of most of the purpose of the code sections that deal with streets. So I think this case is a big deal. I think it's kind of the mouse that roared. If we take those two views, that one, we want hearings officers to look at -- when it says proposal -- it doesn't say proposed adjustment the proposal, i.e. The project, including the -- after it's digested this adjustment, will either pass or fail on this significantly detract from the livability test, you know, or stuff like that, the compatibility criteria, and then secondly can you meet the code dealing with streets by creating a private street? And I say no. I think the whole city council should say no to that issue. Those are the things we would follow up by a letter, you wouldn't include them necessarily this the findings for this case. But in other words, I think this case should reverberate, not just to what this applicant does -- you know, with his property now, but what a lot of other people do, because I think those are two issues that he ought to resolve that way. I think this hearing's been a great opportunity to at least get my wheels turning on those two subjects. I thought we'd been done with the subject of private streets, you know, allowing them to sort of do a worse job with a private street. I mean, again, I'll stop babbling here. But the other thing about adjustments, is you're supposed to get do a better job. You're supposed to get an adjustment, not because it's tough or we can't work up the creativity to meet the code. You're supposed to get an adjustment when you do a better job of meeting the intent of the code, not worse. So I think by the way we've been interpreting this, one the hearings officer say, gosh, all I can do is this much, and my own staff saying, well, if it's a private street it's a street. I think we've set ourselves up for this particular case and as some people have said a lot more like it. So I want us to do that with our eyes open. I don't want to make a major policy change, you know, by accident on a three-lot subdivision. But that's the way I'd like to go on those two policy issues. I'd like to say, no, street means public street, and proposal means the proposal, not just the adjustment.

**Katz:** I would tend to agree with you. I need to get a sense, since it is a policy issue and the message will be sent to both transportation and opd&r, what's the sense of the rest of the council?

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**Sten:** I have a concern.

**Katz:** Go ahead, commissioner Saltzman, you had your hand up.

**Saltzman:** Well, I like the idea of it it becoming a larger policy issue. In fact, I guess that's one of the things that kind of frustrates me in these quasi judicial processes. It seems to me we have a hearings officer who follow's the spirit of the regulation, but saying i'm not allowed to look at the big picture. I guess that's what our job is, is to look at these big picture, but these processes too often confine our ability to do that too. So I think we need to use this situation here to turn it into a larger policy can he. And I think for that reason we need to look at how this overall adjustment does impact what I think will be the quality of the neighborhood, and I think it will have a deleterious impact. On the private street issue, I guess the only clarification issue I need, can somebody still build a flag lot and still call it a driveway versus a public street?

**\*\*\*\*\*:** Right. Flag lot is a driveway, it's not a street.

**Saltzman:** Okay. Then i'm fully in support of it.

**Sten:** I agree. I've been planning to -- after listening to all the issues, to vote against the development. I guess I would just say, commissioner Hales, maybe this is helpful, maybe it isn't, but I think the policy issues are important. And I actually agree with both policy directions. I also think it's important that developers deal with the policies as directed when they apply.

**Hales:** Right.

**Sten:** You know, I can't change the policy, but I actually -- and -- you know, I have a slight disagreement with kathryn's interpretation. I think she's right, and so I actually found the hearings officer to be in error. Where I think the error is not -- he says clearly it's in his decision that this would hurt the livability and the appearance of the area. I think it's in the paragraph when he says he can only authorize to examine the effect of the requested adjustment itself. Well, i'll accept kathryn's argument that that's correct. I won't accept his definition of effect. I think he -- I think he found the wrong definition of the word "effect" because he's defining the effect of giving that adjustment to be simply making a long lot in the back. The effect of that adjustment is allowing the third lot. The third lot forces the first lot to be pushed forward, and it has all kinds of effects on the entire development. So I think he's finding the effect of that adjustment to be far too narrow. That's where I think he erred.

**Hales:** I think you're right, and that's good. We can't deny, as jim as saying at the outset, we can't deny this adjustment request, because we haven't been clear on our policy. But I think it's -- it's actually wrong on both levels. It's wrong, in the way you just described, erik, where I disagree with the hearings officer's interpretation, and we have the authority to do that, and I think we have grounds to do that, but also -- and that's why I wouldn't just be a part of this case, it have to be a letter from me to opdr and a letter from the council to the hearings officer saying it's okay. I appreciate the hearing officer being deferential to us, but we need to tell them it's okay to take this larger view.

**Sten:** That's why I think it's important. If you take the definition of effect to just be, oh, it's a shorter lot in the back, basically ignore that when you put a shorter lot in the back, you change the whole -- I think that's where he missed it a bit.

**Hales:** The other follow-up, if we do have some consensus about this --

**Katz:** Let me ask commissioner Francesconi.

**Francesconi:** We don't have consensus on the reasons for it. I expressed my reasons, and so I think what I would prefer is just a motion granting the appeal and denying the development. Okay, that's what I would prefer. And then if you want to draft a separate letter to transportation on the private street issue, then we should deal with that as a policy. But giving individual hearings officers the authority to decide what's in the best character of the neighborhood will mean that there will be no certainty for either the neighborhoods or the developers, and we're going to get every

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case. So i'm not willing to go that far, commissioner. But so I think the best thing to do is just deny this development and then let's deal with it.

**Hales:** I'm not suggesting that. We should talk about that a little more, because what i'm saying is not that you get, hearings officer, get to broadly interpret -- and there are all kinds of criteria all the way through the code about, you know, character of the neighborhood and significantly detract from the livability or appearance of a residential area. Real subjective stuff. I'm not saying, hey, hearings officer, just have a party with that language and do what you feel best. I'm saying, it's much more narrow than that, jim. I'm saying when you look at an adjustment request -- okay, and I want to talk to the adjustment committee about this as well if we do feel that we should do this -- when you're looking at an adjustment request, don't just look at the adjustment, look at the proposal inclusive of the adjustment. After the adjustment. If the neighborhood says build three-story buildings and somebody comes in and says I want an adjustment to build a four-story building and here are all these other things i'm going to do that more than offset whatever negative effect a four-story building would have, I want him to look at the four-story building, not just at the fourth story.

**Katz:** You want him to look at the impact of the adjustment on the entire project.

**Hales:** Right. It's that narrow, jim. It's not just say these subjective criteria and substitute your judgment for the council.

**Francesconi:** Then I could be on board. Then let's do this with the input of the planning commission and other people.

**Hales:** I don't want to change the code. This is interpretational. Margaret has the authority to take this interpretation from me. I will write margaret a letter sand street means street, but we as a council would need to write the hearings officers a letter through gary and say here's what we need to do with adjustment cases, and i'll take that to the adjustment committee as well. That's outside the motion, but I wanted us to have that discussion, because I could see, mayor, you kind of felt that way, I think.

**Katz:** Yeah. I think that narrowing the interpretation the way commissioner Sten described it in terms of the impact of the adjustment is probably more -- the more correct way to approach this.

**Hales:** Yeah, impact of the adjustment, yeah, okay. So I would move that we -- that we uphold the appeal, and -- and deny the adjustment as originally approved by the hearings officer.

**Sten:** Second.

**Katz:** All right. Roll call.

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

**Katz:** Mayor votes aye. [ applause ]

**Katz:** Whoa, whoa. Findings? Are you going to be able to do it, eric, three weeks?

**Engstrom:** Yeah.

**Katz:** It will come back to us. Give us a date.

**Moore:** November 1st.

**Hales:** And i'll volunteer to draft those letters, bring them back, circulate them among the council.

**Katz:** Thank you, everybody. We stand adjourned.

At 3:34 p.m., council adjourned.