



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **12TH DAY OF FEBRUARY, 2003** AT 9:30 A.M.

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

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

Item No. 130 was pulled for discussion and on a Y-5 roll call, the Consent Agenda was adopted.

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<p><b>120</b> Request of Jada Mae Langloss to address Council to give advice on cuts in services and resources (Communication)</p>	<p><b>RESCHEDULED TO            FEBRUARY 19, 2003            AT 9:30 AM</b></p>
<p><b>121</b> Request of Francine Kaufman to address Council regarding Bureau of Parks and Recreation programming priorities in centers and schools (Communication)</p>	<p><b>RESCHEDULED TO            FEBRUARY 19, 2003            AT 9:30 AM</b></p>
<b>TIME CERTAIN</b>	
<p><b>*122</b> <b>TIME CERTAIN: 9:30 AM</b> – Adjust FY 2002-03 Adopted Budget for Winter Budget Adjustments (Ordinance introduced by Mayor Katz) (Y-5)</p>	<p><b>177253</b></p>
<b>CONSENT AGENDA – NO DISCUSSION</b>	
<p><b>Mayor Vera Katz</b></p>	
<p><b>123</b> Confirm appointment of Jeff Willcox to the Noise Review Board for a term to expire January 31, 2006 (Report) (Y-5)</p>	<p><b>CONFIRMED</b></p>

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<p><b>*124</b> Extend agreement with Tri-County Metropolitan Transportation District of Oregon for Multnomah County to provide a deputy for the Trimet Transit Police managed by the Portland Police Bureau (Ordinance; amend Contract No. 51325)  (Y-5)</p>	<p align="center"><b>177247</b></p>
<p><b>*125</b> Amend contract with Emmons Architects, Inc. to provide architectural and engineering services for remodel of Fire Station 9 (Ordinance; amend Contract No. 33401)  (Y-5)</p>	<p align="center"><b>177248</b></p>
<p align="center"><b>Commissioner Jim Francesconi</b></p>	
<p><b>*126</b> Contract with Waterscapes, Inc. to provide design services in connection with North Park Square for \$350,000 (Ordinance)  (Y-5)</p>	<p align="center"><b>177249</b></p>
<p align="center"><b>Commissioner Dan Saltzman</b></p>	
<p><b>*127</b> Authorize contract for the Effluent Pump Station improvements at the Columbia Boulevard Wastewater Treatment Plant, Project No. 6283 (Ordinance)  (Y-5)</p>	<p align="center"><b>177250</b></p>
<p align="center"><b>Commissioner Erik Sten</b></p>	
<p><b>*128</b> Authorize agreement with Cascade AIDS Project for \$48,000 for the Transitions to Housing Program and provide for payment (Ordinance)  (Y-5)</p>	<p align="center"><b>177251</b></p>
<p><b>*129</b> Authorize agreement with JOIN for \$63,900 to fund a rental assistance program under the Transitions to Housing Program and provide for payment (Ordinance)  (Y-5)</p>	<p align="center"><b>177252</b></p>
<p><b>*130</b> Amend loan agreement with the U.S. Department of Housing and Urban Development for the Skidmore Fountain Building (Ordinance)  (Y-5)</p>	<p align="center"><b>177256</b></p>
<p align="center"><b>REGULAR AGENDA</b></p> <p align="center"><b>Mayor Vera Katz</b></p>	

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<p><b>131</b> Establish a Portland Utility Review Board (Ordinance; repeal and replace Code Chapter 3.123) <b>Motion to strike sentence as determined by the Council and the board shall report on other City activities or proposed policies with significant rate impacts on water, sewer, stormwater, solid waste:</b> Moved by Commissioner Francesconi and seconded by Commissioner Leonard.</p>	<p><b>PASSED TO SECOND READING AS AMENDED FEBRUARY 19, 2003 AT 9:30 AM</b></p>
<p><b>132</b> Amend property Maintenance Code to clarify existing regulations and correct errors (Second Reading Agenda 116; amend Title 29) (Y-5)</p>	<p><b>177254 AS AMENDED</b></p>
<p><b>City Auditor Gary Blackmer</b></p>	
<p><b>133</b> Assess property for sidewalk repair by the Bureau of Maintenance (Second Reading Agenda 118; Y1047) (Y-5)</p>	<p><b>177255</b></p>

At 10:29 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF FEBRUARY, 2003 AT 2:00 P.M.

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

Commissioner Leonard arrived at 2:07 p.m.

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

<p><b>134 TIME CERTAIN: 2:00 PM</b> – Appeal of Centennial Community Association against Hearings Officer’s decision to approve the application of Qwest Wireless LLC for a conditional use to construct a seventy-five-foot tall monopole at 1546 SE 169<sup>th</sup> Place (Hearing; LUR 01-00737 CU)</p> <p><b>Motion to uphold the Hearings Officer's decision deny the appeal and establish the condition that the neighborhood and the urban forestry arrive at a number of trees that is more than four:</b> Moved by Commissioner Saltzman and seconded by Commissioner Sten.</p> <p>(Y-3; N-1, Leonard)</p>	<p><b>Disposition:</b></p> <p><b>TENTATIVELY DENY APPEAL AND UPHOLD HEARING OFFICER’S DECISION WITH MODIFICATIONS; APPLICANT PREPARE REVISED FINDINGS FOR MARCH 20, 2003 AT 2:00 PM</b></p>
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At 3:55 p.m., Council recessed.

**February 13, 2003**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 13th DAY OF FEBRUARY, 2003 AT 2:00 P.M.

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

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

<p><b>135 TIME CERTAIN: 2:00 PM</b> – Consider the Land Use Board of Appeals remand of the application by Metro and Bureau of Parks and Recreation for a conditional use master plan review to eliminate the temporary parking located on the west edge of the Oregon Zoo (Limited Evidentiary Hearing; LUR 97-00127 CU MS EN)</p> <p><b>Motion to grant Metro's and the Park Bureau's appeal on the adjustments:</b> Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.</p> <p>(Y-4)</p>	<p><b>Disposition:</b></p> <p><b>TENTATIVELY GRANT APPEAL; PREPARE FINDINGS FOR FEBRUARY 19, 2003 AT 6:00 PM</b></p>
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At 2:32 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

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

**Francesconi:** Here. **Leonard:** Here. **Saltzman:** Here. **Sten:** Here.

**Katz:** Present. All right. Let's take item 120.

**Katz:** Is jada mae here yet? She usually comes in later so if the council will indulge me, I will set that aside and maybe we can take a break and hear from her when she comes in. 121 -- well, let's read 120 so we can go right into it.

**Item 120.**

**Katz:** So long she doesn't have another tax plan, we will be fine. 121.

**Item 121.**

**Moore:** She asked to reschedule next week.

**Katz:** Let's take the consent agenda items. Any items to be pulled off?

**Karla Moore, Council Clerk:** I believe we had a request from sheila holden to pull 130.

**Sue Parsons, Assistant Council Clerk:** She will be here at 9:45. She just called our office at the clerk's office.

**Katz:** All right. Are there any objections on the council to pull 130 off and then come back to it? For a vote? Do I hear any objections? Hearing none, so ordered. Karla, remind me to do that because we will be moving along.

**Moore:** Ok.

**Katz:** Anybody in the audience wanting to pull an item off the consent agenda? If not, roll call on the consent agenda.

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

**Katz:** Mayor votes aye. All right. Time certain. 122.

**Item No. 122..**

**Mark Murray, Financial Planning:** Mark murray, financial planning. This is the second of three major budget adjustments we do during the year. This particular one, the winter bump is quiet and benign in nature, particularly when compared against last year when we were making reductions. I will have larry run through that very quickly to see if you have any questions or concerns.

**Larry Nelson, Senior Financial Analyst, Bureau of Financial Planning:** For the record, I am larry nelson, financial analyst with the bureau of financial planning. A total of about \$618,000 is transferred in this budget report. Approximately \$134,000 is transferred within the general fund, and \$484,000 is transferred in other funds. This budget is probably the tenth of the size of a normal budget report as mark mentioned earlier. We have a total request of about \$30,000 from general fund contingency and although we have five other actions, the most significant of which is contained in the auditor's office. They are requesting \$66,000 from general fund contingency to pay for the kpmg financial audit. In addition to that we have the office of cable communications and franchise management. They are depositing \$59,000 in general fund contingency as a result of compliance revenues collected by the mt. Hood cable regulatory commission. And lastly, the cable office is also making a request for contingency of about \$30,000 in professional services to participate in the joint audit of qwest communications conducted by the cities of Oregon. The city of Portland's share of the audit cost is estimated to be approximately \$75,000. The council has

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authorized this previously december 18th for ordinance 177144. As a result of all these transactions, general fund contingency now has a remaining balance of about \$1.4 million in this fiscal year. However, I would like to caution council we have some delay contingency requests, which include a request from the police bureau for dignitary protection of \$262,000. The bureau of transportation has made a request for additional money for the streetlighting cost, which will be determined in the spring on how much they actually need. And lastly, the bureau of developmental services is making a request as a result of delayed foreclosure revenues of approximately \$354,000.

So, keep those in mind for the next report coming in the spring. There is just a handful of request contained in this report. There are three or four actions which I will talk about briefly. The first of which is to public affairs. They are requesting authorization of a new position to establish the children's investment fund director. This position will approximately cost \$30,000 for the remainder of this fiscal year, and next year the projected costs will be about approximately \$87,000.

Within the office of management and finance, the health insurance fund is making a request to establish cash transfers, premium distribution and computer services to implement changes required under the health insurance portability and accountability act of 1996. Portions of law specifically provide protections to individuals against unauthorized disclosure of private health information. All city staff that may have access to protected information includes h.r., Information technology, payroll staff, timekeepers, police, fire, and potentially boac employees. The resources requested are essential to implementing privacy systems within the city and creating a manual of information technology safeguards against the disclosure of protected information in order to mitigate noncompliance penalties. Another request within the office of management of finance includes com-net which is receiving cash transfers from the police bureau totaling about \$1 million to the wireless network, which is funded by the police cops more grant. In addition this network enhancement will not result in additional cost to the police bureau. And lastly within the water bureau, the water bureau is requesting position authority for six positions with no funding required.

These positions will be requested in the fiscal year of 2003, 2004 budget, and these positions are for the procurement and implementation of the new customer information billing system. The bureau of water is requesting these positions now to prepare for the purchase of a new system at the start of next fiscal year. Going on to projections to year end, most notably the police bureau, as of accounting period six, current expenses indicate the police bureau is lined or slightly below its fiscal year 2002-2003 appropriations, so that's good news. Although overtime costs are in danger of exceeding the police bureau's target. These costs actually have turned down over the last few months, and overall personal costs are projected to be below target. So, however, we are paying attention to the revenue estimates within the police bureau. They are looking like they are going to be a little short, but we are paying attention to it, and as a reminder any shortfall in revenue raises the possibility that the police bureau could possibly overspend the general fund discretionary allocation, but again, we are paying attention to that. There is one technical adjustment, and that's within the pension obligation bond fund. We are adjusting inner agencies with other funds to reflect the lower than expected interest cost on variable rate pension bonds. This has resulted in a savings in various funds and we will be keeping an eye on this. We have a few more transactions to accomplish. We have already done it for the general fund, and it saved the general fund approximately \$500,000 during the fall budget monetary report. That's it.

**Katz:** Thank you. Let me just add a p.s. on the police budget. We are keeping some vacancies open just to make sure that we are aligned and not overspent, and we haven't tapped the half a million that the council appropriated for overtime, so we may be all right on that, but if you recall there was a budget note that asked the office of finance and management, the police bureau and my office to sit down and to figure out whether they have enough money to manage the size of an organization that they have right now with all of the issues facing this community. We don't know

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that yet, but at least for this year, I think we will be close to the, to their budget. So I thank everybody for working on that.

**Francesconi:** Mayor, you deserve the thanks because I remember those budgets and I remember the status of the police budget very well. I am going to ask a couple of dumb questions, and I have been here long enough that I should know the answer, but following up like on the police issues the mayor raised, so that \$250,000 for dignitary protection, does that come out of -- where does that money come from?

**Murray:** Normally that would come out of contingency. It's an item that although it may be recurring, they never know how much it might be in any particular year, so the practice has been not to budget anything specifically for that item and to allow them to come back to council and request appropriation based on actual expenditures.

**Francesconi:** But does the money come from the police budget or from our general contingency?

**Murray:** From the general fund contingency.

**Francesconi:** So if we approved this today is that correct what we are approving?

**Murray:** No, we are just highlighting -- they came in the fall and requested it, and we recommended and council agreed at that time to defer that until the spring to see if there's enough savings within the department to cover that expenditure without having to use the general fund contingency.

**Francesconi:** So you are just alerting us to what may happen with all these series of requests?

**Murray:** Right.

**Francesconi:** Ok.

**Katz:** I think that that's been the history that for that amount on election years, or even annually, they -- they go ask for a contingency request because we don't budget that since we don't know what we are going to be seeing in the city.

**Murray:** That's correct, and sometimes even in the past the council has said well, I am sorry, we really don't have enough in contingency and you do seem to have enough within your expenditure projections.

**Katz:** Yeah. I just want to add that, if things materialize negatively for all of us as a nation in this community, those -- the problem will increase dramatically, so, and we don't have the resources to cover for that. I need to flag that for you. I don't know whether it will impact fire as much, probably will impact them some, as well, because people will be on 12-12 shifts.

**Murray:** I have asked my time to go ahead and do a projection based on some assumptions regarding that.

**Katz:** Further questions?

**Leonard:** I do. And this is more procedurally. When we get to the point that we are going to make a decision to spend an extra \$200,000 or whatever it is out of the general fund, what information do we, as a council, depend on? I understand the commissioner in charge has access to more information, but how is it that we make a decision that the money, in fact, wasn't available within their budget? Who does that kind of an analysis for us and what kind of information am I provided to be able to --

**Murray:** Three times a year you would get the bump request from the bureau, specifically, if it was through your bureau, those requesting, for instance, money from contingency. That would be discussed with you prior to submittal to financial planning. Once we get it, we look at whether it is -- it could be classified as a legitimate contingency request. Is it an unforeseen emergency, for instance. Even beyond that, we analyze their expenditure projections and their revenue projections to see if there's a way to fund it within their existing allocation, and we pushed back, frankly, pretty hard on the bureaus to that because there's only -- there's only one, only \$1.4 million in the general fund contingency out of a \$350 million budget, so it's not very much. So, using our eyes and checks



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with you and then advising you during this session and even prior if we have numerous requests, for instance, we would also discuss them with the executives to get your perspective. Is this a legitimate claim, in our view, and do we see other avenues that they may be able to do that. We would ask you to fund that.

**Leonard:** How do you gather that information? Do you talk to the managers or do you -- what is your process?

**Murray:** Excuse me. They have to submit specific information during the bump requests to justify the request. Why they need it, what it's for -- they are supposed to address whether they believe they can fund it through other sources or not. That can be inconsistent at times, but in the process working with the bureaus, we determine that before we make a final recommendation to council whether we believe you should fund it out of contingency or hold off or just say no, we believe you should fund that within the bureau.

**Leonard:** Thank you. I do have two other questions.

**Katz:** Go ahead

**Leonard:** You mentioned the health fund. Am I incorrect in the impression I received that there has been some concern about the amount of dollars that are in the health fund?

**Murray:** It's a declining balance situation for the health fund. I haven't seen the latest projections, commissioner, but if I recall the last projection was to have a spin down of the reserves within about a five-year period.

**Leonard:** I guess I am talking more about was there some misunderstanding between the employee groups and the city between the amount in the health fund currently?

**Murray:** Not that I'm aware.

**Leonard:** I thought some red flags had been raised that there were some concerns. And the other question that I had was -- and this is information for me -- this doesn't have page numbers on it. The next to the last page starting on 283-1. There are a list -- a series of pension obligation fund adjustments. What is that?

**Murray:** I'm sorry, pension --

**Leonard:** Pension obligation fund adjustments. There are quite a few of them. They add up to be quite a bit of money. What is that?

**Murray:** That is the part of the debt that we issued to pay off the unfunded liability that we paid about three years ago. Part of that debt was funded with fixed rate, instrument, debt instrument and part of it was funded with a variable rate debt instrument. Since interest rate, variable rate debt has dropped appreciably, we capture those savings and ask the bureaus, do you want to recapture them, reallocate the money because we don't need to take it out of your fund to cover the pension obligation funds, and the list you see there is those funds that are saying, yes, we'd like to use that money for other things --

**Leonard:** Got you, ok. So if they capture savings, we actually allow them to keep the savings within their budget?

**Murray:** Absolutely. For the operating bureaus. For the general fund, we do that at the fund level. In the fall bump, we recommend --

**Leonard:** I'm sorry, can you explain what you mean, you do that at the fund level, what's it mean?

**Murray:** Not within a specific bureau, so in other words, general fund has a number of bureaus. The amount that is allocated to those specific bureaus, those bureaus don't get that money, that savings. That savings occurs at the fund level because the transfer for the fund --

**Leonard:** I'm sorry, when you say the fund level, you mean in a general fund to the city?

**Murray:** That's correct

**Leonard:** Ok.

**Murray:** Kind of a step above the operating unit, for instance --

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**Leonard:** So that's increased revenue to the unanticipated revenue to the, to the general fund?

**Murray:** It would be more of the fact that we do not have to spend the allocation, the expenditures.

You can bring it back from a transfer to the debt fund and use it to cover, for instance, other expenditures or revenue shortfalls in the general fund, which is what council did in the fall bump

**Leonard:** In the other fund bureaus, there is a policy, if they discover savings in their pension obligations, did I understand you to say they can spend it how they want?

**Murray:** That's correct. They can ask council to spend it in other ways.

**Leonard:** Ok. But that's -- that's -- that's different. [ laughter ]

**Katz:** Explain why.

**Murray:** It's because it is an obligation that they have to pay to the pension obligation fund. It's managed by our debt department, so it's not that the individual bureaus or fund managers find those savings. They are found on a city-wide basis and allocated out amongst the bureaus, and then debt would advise them, for instance, through us that, that we have a lower commitment this-year, so your transfer to the debt fund will go down, therefore, they can use that savings from that transfer for other operational needs if they get the approval of council

**Leonard:** Ok. I was going to ask you about that. And when you get to that point, you identify there are savings. What's the process by which they are allowed to spend the money? Do they have to come here?

**Murray:** This process right here, as a matter of fact. This will do the reallocation

**Leonard:** That's what we are doing here?

**Murray:** That's correct

**Leonard:** All right. And is there a way to identify here what projects within here are projects being funded by those savings? Do we have any way of getting a handle on that?

**Murray:** Indeed. I don't know how detailed of a list you have in front of you, but there's --

**Leonard:** It just has numbers --

**Murray:** The detailed spreadsheet that would indicate how they plan to spend the dollars

**Leonard:** For me --

**Murray:** To the right of the table is a very brief description of what the amount is going to be used for. They will break it down by line item, for instance, whether there is personal services or materials services, and then over to the right a brief citation of what it's going to be spent on.

**Leonard:** It would help me to have that kind of information. I don't see that here in -- I don't know if it's been given to me or didn't make it into my packet, but I didn't see anything like that.

**Murray:** We can get that backup information for you, but more often than not in this situation, they will just put it in their own fund contingency.

**Leonard:** That gets identified then in the normal budget process when we are developing a budget for the following year?

**Murray:** I will get you the spreadsheet and the details on exactly which funds did what with the savings

**Leonard:** Thank you.

**Katz:** Thank you. Any further questions? Anybody else want to testify on this item? If not, roll call.

**Francesconi:** Just -- i'm going to, obviously, support this, but we have raised the notion, and actually commissioner leonard brought it up. If general fund bureaus are creative and able to spend less money, you know, the idea of it -- they should get some reward for that without it all going back into the general fund. I think that we have had this discussion once before, so I don't know -- it's something that i'd like us to look into. There ought to be an incentive built into the bureaus to get something back if they save money.

**Murray:** The only incentive --

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**Katz:** Wait --

**Francesconi:** It's something that we can talk about. Aye. I am voting, you are right.

**Leonard:** Are we not supposed to comment?

**Katz:** Yes, there was not supposed to have a conversation

**Leonard:** Oh. Well, I guess --

**Francesconi:** You can talk. [ laughter ]

**Francesconi:** You are elected, he's not. [ laughter ]

**Leonard:** I was just going to vote, move on, but I am compelled to say that I disagree with the notion that there should be some award system for identifying savings. That should be the way we do business, and to the extent that we can identify programs that maybe don't fit the city's mission or don't justify the fee or tax, I mean, i'm, i'm -- i'm of the belief that we need to identify those and try to save tax payers' money where we can, or if we have bureaus that have savings that we think can be used in other bureaus for programs we eliminated previously, I think we need to do that and not create a culture where savings are just spent within that bureau because that doesn't necessarily reflect the, the goals of the city council, you know, so I don't agree with that. I'm going to vote yes, but I would like -- i'd like more information on this kind of stuff as we do it because for an example, I have a bureau where there are savings to be found for the general fund, and the fire bureau, which commissioner Sten controls, has a need for something operationally to provide a higher level of public safety. I think it's my obligation to identify that for him so that that's available for a service, and we shouldn't get all caught up in bureaus being lineal and doing their own things.

**Katz:** Are we chopped liver? I'm sorry. [ laughter ]

**Sten:** Just calling it like you see it

**Leonard:** I just think that -- I just don't agree with that kind of thinking, so thank you. Aye.

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

**Katz:** Yeah, I hate to call -- these are -- call these savings. That's the fault in all this conversation. These aren't savings, and so these are moneys that are tapped from all of the bureaus, and if we can manage those funds through the bond market and through short-term lending or long-term lending or whatever instruments you have, then they allocate back to the enterprise bureaus, rightfully so, because they can't go into another fund, but you will see those savings as part of your revenue and expenditure picture, so sometimes you will say well, you told us we need to cut x amount and now we are cutting -- we have to cut less, in some case, it's because we captured the good business management of the city and are not, therefore, requiring to cut deeper in the budgets. We do run the city well and manage well. Thank you. Aye. All right. Is jada mae here? I think we have both the folks here. Let's return. She left? Francine kaufmann are you here?

**Moore:** She's rescheduled to next week.

**Katz:** Rescheduled, ok. Item 131.

**Item 131.**

**Katz:** All right. Come on -- now, be kind. This is tommy's first, and notice he's wearing a clean, well-ironed shirt and tie for this, and he deserves our attention. [ laughter ]

**Katz:** But, let me start by saying that --

**Saltzman:** Thanks.

**Katz:** Your thanks, that former commissioner lindburg and I felt that it was critical to have citizens overseeing the rate structure and the cost of services of our utilities, basically, the bureau of environmental services, the garbage utility, as well as the water utility, so it was established in 1994. They have provided us with advice and recommendations, and the council has not always been happy with that, and that's fine. That was the whole idea, that they were to come and give their reason and rational for either approving what our bureaus are offering to us or recommending some other options. It was a large group because we wanted to make sure it was all representative

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of everybody because we are very democratic in Portland, but it was unwieldy. Large group -- it was an unwieldy large group, and as they fell apart, our interest as a city in making sure we do the wise things because the rates aren't going up and will continue to go up -- it has a substantial impact on residences and on businesses, we need, even more need -- more need -- we need even more oversight by citizens who have an interest and knowledge of the rate structure. So, what you are going to see are some changes, and I will let Tommy go over those changes. I want you to know that I met with the remaining members of the purb board, and Tommy, I understand, has met with all of you, and we try to incorporate all the ideas and then work through them to make sure that what we have is workable, doable, that, that the, their charge will assist us, and the one other thing that, that you advised us and we thought was a good idea is to have each one of you place an ex officio member on the purb board so you are aware of what they are doing and when they need guidance that they have some guidance from you. Ok. Tommy.

\*\*\*\*\*: Thanks. Good morning, mayor. Council. Thanks for the opportunity to wear my tie, as the mayor pointed out. [ laughter ]

\*\*\*\*\*: I can walk through some of the major changes --

**Katz:** Tommy, bring it closer to you.

\*\*\*\*\*: I can walk through the major changes for you, and if there are any questions, I will be happy

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

**Tommy Brooks, Mayor's Office:** Tommy Brooks from the mayor's office. The biggest change is the membership and the size of the membership. We are taking -- or proposing it. It goes from 15-9. This is a result by the conversations that we had, and it is sort of the track record of the board and our inability to keep 15 seats full. Without full seats, it's a lot harder to, to keep the quorum so the board can do their business. And looking at other boards and commissions and the rest of the city structure, the seventh and nine number seems to be magical, so we are sticking with nine. We tried to keep the relative distribution of the seats the same, so basically everything was cut in half, went from five geographical down to three. There was four business seats, and that goes down to two. There were four public interest seats, and that goes down to two. The only thing that stayed the same is the at large seats, and hopefully that can be used to round out the board as we start to fill it if it looks like any of the other seats are leaning one way or the other, especially with the public interest. We want to create diversity within those seats, and that extra seat will allow us to do that. The second change was the -- one of the questions we got from the existing members and previous members and even from bureau staff is what's the board's jurisdiction? What are they really supposed to be looking at? And so I think as the mayor mentioned, the mission of the board stays the same. The mission of the board is to advise on the fair and equitable distribution of rates, but what falls in that can be kind of gray sometimes. So, the proposed ordinance basically identifies that the primary jurisdiction of the board is to look at the rates and how they are -- how they comport with legal mandates, customer needs, those sorts of things. And then secondarily there is sort of the other board capacity. If there's new proposed policies, it's a place to go to sound those out. If the board sees something and other city activities that are impacting the rates, they need to be able to elevate that to the council and decide between the council and the board if that's something that they need to pursue. So, the language in the ordinance tries to clarify that. Because there will always probably still be gray area, the third major change is to really forge the relationship between council and the board. This is something for the past at least three years the board has really been asking for, is when there is this gray area, how do we know that as we go down these paths, the information we come up with will be useful to council. So there are two changes that will help forge that relationship. The first one is something that past board members asked for, and that's a yearly work session with the council. We figure if we did that around

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september when they have a good idea of what the financial forecasts will be and before we get into rate season it's a good time for council to sit down with the bureaus and to stretch out the next 12 months. The second change, as the mayor mentioned, is to have some official liaisons from council offices to the board. The liaisons would not have voting privileges. They would not be voting along with the board but they would be there to provide communication between you, as the actual policymakers, and the advisors on the board. Because we also got rid of the subcommittees on the board, and that was the request of a lot of past members, because a lot of that work was redundant, anything that got discussed in the subcommittee would have to be discussed at the full board anyway, so we got rid of that prescription. That created sort of a much smaller executive committee for the board, and so with that, the liaisons could also upgrade in that capacity to meet with the chair and the vice chair. Those are the major changes. There is other sort of slight wordings, just try to get this tighter. But if there is any questions.

**Katz:** Question?

**Saltzman:** You got rid of the subcommittees but there can be standing committees of three members?

**Brooks:** The original ordinance actually prescribed three subcommittees. They said that the board had to have solid waste, sewer, water -- this allows the board to form a standing committee if there is an issue that they need to, but we are not prescribing that that happen. We are not demanding their time once a month.

**Saltzman:** Ok.

**Francesconi:** Well, this is all terrific work. I just have one concern about one phrase.

**Brooks:** Ok.

**Francesconi:** It's in the gray area, so i'm looking at the scope of the work. The last sentence under paragraph b. "as determined by the council, the board shall report on any city activities, proposed policies with rate impacts."

**Brooks:** Right.

**Francesconi:** So why does it have to be determined by the council?

**Brooks:** The first part of that phrase is sort of the check and balance part of this. When I talked about the relationship between council and the board earlier, we really want the board to know that the work that they are doing is going to be useful to council, so if someone raises an issue and the council is not interested in hearing about it or isn't sure quite how it will play out there, needs to be some discussion about, about how that deliberation take place, and ideally it would happen during the work session every year, but it may need to be a little quicker, and it could happen sort of through the, through the council liaisons.

**Francesconi:** So let's take the filtration plant as an example. Should the purb be able to weigh in on that issue?

**Brooks:** Well, in the original ordinance and now it says, I believe, it's under section c, relationship to other city advisory groups, the council and the bureaus may form other groups as necessary to advise on utility matters. That's from the existing ordinance and from the proposed one, and that leaves the decision up to council. Council has the authority to form a separate group to look at the issues or they can put that on the purb's plate, but the discussion needs to happen and there shouldn't be any kind of default mode.

**Francesconi:** So the council would have to determine under section b, as well, would that be one of the other city activities that the council would have to determine before the purb could take it?

**Brooks:** That's a good question. That's why I think the, the, like you said, it's a gray area, and without discussion it's hard to tell where it would fit in, so there needs to be as determined by council, where does that fit in.

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**Katz:** Let me jump in on this one, if, if the activity of the city impacts rates, that is as far as i'm concerned, that's within their purview because it will have rate impact, and it's a policy that the city is looking into, and it's a policy that the city is working on. So that would -- that would, that would be within their purview.

**Francesconi:** And I agree with what the mayor just said. Therefore, in order to accomplish that, I believe that you have to eliminate under section b the phrase, "as determined by the council." I think that that should be eliminated, and it should say the board shall report on city activities of policies with rate impacts." I think that's what the mayor said, and that's what I think it should be.

**Brooks:** I agree that --

**Saltzman:** Well --

**Katz:** Go ahead.

**Saltzman:** I agree with everything just said, that something like a filtration plant should be part of the purview, but take another example, you know, suppose the purb decided to wanted to look at the pge or the enron, potential enron acquisition, is that something that falls within their purview? I would think offhand it doesn't unless the council were to ask, to determine that it does, so I think that this language is relevant.

**Francesconi:** I agree with commissioner Saltzman on that one.

**Brooks:** That's why --

**Katz:** That's why the language is there.

**Brooks:** That's why if the majority of council agrees that it falls in the purview, it falls in the purview. If it doesn't, then it doesn't. That's, that's the check, as determined by council.

**Katz:** I think that that's one of the reasons for having ex officio members from the, from our staffs and those of us who feel that the filtration issues of regionalization, other issues that impact the rates and policies are within their purview, but, but I would agree that the pge issue is not within their purview, even though it's a utility and may impact -- and certainly will impact rates.

**Leonard:** But doesn't this eliminate the ability to review the pge purchase under the very definition of what the purpose is, and you look under the scope, it's very specific in what kind of services, says that they are responsible for. Electric rates is not one of them.

**Brooks:** I think it is clear the intent of the current board and the proposed board is to look at solid waste, sewer, and water --

**Leonard:** It is not just implied, it expressly says "water, sewer, stormwater, solid waste, financial plans and rates."

**Brooks:** Right, but I wouldn't put it -- the possibility that looking at the title, Portland utility review board, if Portland had a new utility, there might be some assumption that that would then be added to the scope.

**Katz:** Let me ask them, is this existing language? I don't have my markup copy.

**Brooks:** Which one?

**Katz:** The phrase that we are working on.

**Brooks:** This is an addition.

**Katz:** This is an addition, ok.

**Francesconi:** What I would prefer it to say is that the board -- you strike the -- back on the last sentence again, strike "as determined by the council," and the board shall report on other city activities or proposed policies with significant rate impacts on water, sewer, stormwater, solid waste. In fact, if it's appropriate, if the council is ok, I am going to actually make that as a motion.

**Leonard:** I will second that.

**Katz:** Is that a motion?

**Francesconi:** Yes, please.

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**Katz:** Discussion? Ok. What's the sense of the committee? The council, support the motion? Award the motion? Dan?

**Saltzman:** Well, I will raise a question here because one of the issues that came up in the reconstitution of purb was whether transportation should be under the purview of it because transportation is a significant impact on stormwater costs. So, I would say if you want to give them carte blanche to look at transportation, transportation investments, that's fine. That's what this would do. If you want the council to have a check and balance on that, then you keep the current language.

**Brooks:** That really was effort here, is that clearly there's other city activities that impact rates, and last year the utility relocation --

**Katz:** We have a motion, a discussion. Council discussion --

**Francesconi:** Just in terms -- that was sweet, honey, that was sweet, that was nice. Commissioner Saltzman, I don't --

**Leonard:** It sounds different coming from you, though, the "honey," part. [ laughter ]

**Katz:** I didn't even realize that I had said that.

**Francesconi:** We are asking citizens to take a time consuming job. If they want to look at the effect of transportation on the water and sewer rates, I am ok with that.

**Katz:** Ok. It's obvious that it's unanimous. The motion carries. All right. All right. Testimony. Let's open it up.

**\*\*\*\*\*:** I yield my opportunity to speak to larry --

**Katz:** That's fine. You don't need to yield, you can come up and he can come up. How about that. Go ahead.

**Jim Abrahamson, 2004 SE Clatsop St., 97202:** Good morning, mayor Katz and the members of the council. My name is jim abrahamson, I am a resident of the sellwood neighborhood in southeast Portland. I served on the Portland utilities' review board for nearly three years the last 20 months as chair. I am here this morning to offer testimony in support of the ordinance that reestablishes the Portland utilities' review board. I am supportive of the changes reflected in this ordinance. I believe that these changes will improve both the focus of the review board and the quality of information that the Portland city council will receive from it. Some are contending the new purb is less independent than the former board. While that may appear to be the case I contend the resumed independence of the board was illusory. It was never established to be fully independent, attempts to take it so were doomed. The old one functioned well as the poem focused on the issues and aggressively challenged the bureau when necessary on issues related to costs and rates on behalf of Portland utility ratepayers. The reformed group has the potential to fulfill this vital mission. Where the old board failed was in the attempt by some to push this presumed envelope of independence into areas that were, in my opinion, not supported by the ordinance or by extension by council. Purb is provided with the direction and clarity of purpose. It should pave the way for the critical evaluation of utility costs and rates and improve information flow between the council and the board. In closing, allow me to take a moment to apologize to the council and to city staff, particularly tommy brooks and the mayor's office for the disruption caused by my abrupt departure last october from the original purb. I believe that my action is the most direct and efficient avenue to produce the needed changes deflected in the ordinance before you today. I urge adoption of this ordinance and wish you all the best in forming a new purb and getting it quickly up to speed.

**Katz:** Thank you.

**Valerie Hunter, M.D., 1400 SE 60<sup>th</sup> Ave., 97215:** I'm valerie hunter, 1400 southeast 60th. I'd like to first of all congratulate the mayor for reviving and breathing new life into this very important body. The bureaus, in general, and the water bureau, in particular, needs citizens oversight and

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sunlight is the strongest disinfectant, and also increase of citizens' approval of the governance. I believe many of the mayor's proposed changes are good ones, such as reducing the number of the board members to a more manageable nine, creating the ability of the board to look at other city issues, if directed by council, and establishing the annual work session. I think these are all important changes. However, my reading of the proposed ordinance is that it contains language which may, perhaps unintentionally, unreasonably limit what issues the board may study and report on, what information the board can gather and limit the flow of information to the, to the council and the citizens. If you will look inside this packet I have given you, you will find the old ordinance with its, with the superimposed new ordinance. The language eliminated is there in ~~strikeout~~ and the new language is there in underline. My reading of this is -- the number, number one, it eliminates the watchdog function. Section 3, 12310-a eliminates language requiring the board to attempt to increase customer understanding of the long-term financial issues and resulting impacts on sewer, solid, and solid waste services and rates. Number two, I believe it reduces the ability of the board to participate and monitor bureau financial planning and report to the council on the same. Section 020-a eliminates language requiring the board to consult with the bureaus during the development of their financial plans, and it also eliminates old section 020-b, the board will consult with the bureaus as they are budgets are developed and monitored, the proposed budgets in regard to their conformance with financial plans and report to council. It seems to limit the scope of what the board can report to council. Section 020, new section b specifies that the report will report on proposed rate changes to the council rather than saying that the board will report to the council the. That seems to me like an important specific change. It also seems to restrict what bureau discussions the board can participate in to review an analysis of rate designs proposed by council, that's the actual new language, instead of --

**Francesconi:** We just took care of that one.

**Hunter:** You took care of that? Ok. The board can report on other city proposed activities only if determined by council and if they have rate impacts?

**Francesconi:** We took care of that.

**Hunter:** Ok. Sharing information with the public is permitted by the new code, maybe severely restricted by this language in section 020 b, the board may share the results of deliberations and recommendations delivered to council. I take this to mean that all the information that has been formally presented in the september meeting, the yearly, once a year meeting would follow under this.

**Katz:** Finish your thought.

**Hunter:** I'm sorry?

**Katz:** Finish your thought.

**Hunter:** The -- if, in fact, they share information once a year, that would restrict citizen access to information unless the fact that there is now going to be commissioner liaison to the purb board is recognized as counting and presenting information to the council.

**Katz:** Thank you. Tommy, make notes and come back later on that. Go ahead.

**Larry Harvey, Tri-County Lodging Association:** Good morning, mayor Katz, members of the commission. I am larry harvey. I appreciate the opportunity today. I am here wearing a couple of different hats. I provided written testimony for the record, but let me add to that first of all that as most of you already realize, I represent tricounty lodging association, major users of water throughout the region, and as an association, we are also a member of the, of the water users coalition. Within that context, and you can take my written comments into consideration as you take a look at them, i'd like to thank the, the council, as well as commissioner Francesconi, specifically, for the recommendation. I think that the, the change or proposed change you did adopt eliminated some of the concerns that we have, as well, so I think that it will make a -- the proposed



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revitalization of the purb much more flexible in executing its duties. We have long been advocates of citizen participation in many policy matters, as you well know, so we are often visiting with you with our professional opinions on a variety of issues. So, we appreciate this opportunity. We even would be happy to provide recommendations or potential nominees to help serve on the committee to keep you apprised of the -- some of the major water use issues that are going on throughout the city, itself. So, I think that you have, you have heard plenty at this point on a variety of issues. I have nothing else to say other than if you have questions, and i, too, am glad that tommy showed up in a tie. [ laughter ]

**Katz:** Questions? Thank you. Anybody else? Thank you.

**Katz:** Anybody else want to testify? Ok. Tommy, I just noticed you moved language around.

**Brooks:** Correct.

**Katz:** Why don't you go ahead and talk about that.

**Brooks:** To the, two of the points that dr. Hunter brought up, I think the first two eliminating the watchdog function and the budget process are both lumped into there together, the same change. Basically, the, the watchdog function in the purb is what I spoke to earlier. I think that, that the other city actions that may or may not be visible to the, the normal rate making process.

**Katz:** Let me, as you are looking on that, d says the board may also share the results of its deliberations and recommendations to individuals, groups, including neighborhoods, business associations, and other groups. , so they have the ability to do and share that information with anybody. I mean, that's the reason -- that's the reason for the board.

**Brooks:** It's not meant to imply that only the information that comes out of the september work session can be shared. Ideally this board will be communicating with council year around, but the intent is that this board advises council first, and those decisions are made first because council needs that information, and then, and then information can go the other way. The first couple of paragraphs under the scope, a and b, b was removed, but it was dispersed among the other paragraphs. Obviously, this board is going to need an understanding of the bureau's budgets in order to make the rate -- to deliberate on the rates, so that's implicit in the other activities, and that's, that's, as they are be looking at the budgets, that's where they can look out for other things, as well.

**Francesconi:** Of the issues raised, I only have one concern not four or five, and that -- and because I have never had the bureau of water and the bureau of environmental services, there may be practical reasons here that I don't understand, ok, so I want to preface it with that. But, why would you eliminate the language, if you did and didn't put it somewhere else that the board will consult with the bureau of water and bureau of environmental services as the budgets are developed and will monitor the budget in conformance with financial plans? Why was that sentence eliminated?

**Brooks:** That's what I was speaking to, in order to really make this tighter, that seems like, like an obvious activity that would have to take place, and we, we made that part of, of the financial planning process and the rate design process, so an understanding of the budgets and commenting on the budgets would be part of those two activities.

**Katz:** In other words, you didn't spell it out because it's obvious if you are going to do that, you need to have the consultation and have the information from the bureaus, so that's the intent.

**Brooks:** Right.

**Katz:** Anybody else?

**Saltzman:** Yeah. I thought that -- I don't think that dr. Hunter got to the last point, but -- about the executive committee in the testimony, to consist of the board chair, one other purb member, and then the, the ex officio council members do those liaison have voting power?

**Brooks:** No --

**Saltzman:** Not on the executive committee, either?

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**Brooks:** No. The description of the liaison, it does say the liaisons will not have voting privileges.

**Katz:** Ok. If there's no further discussion, it will pass onto second

**Leonard:** I just had a procedural question, just simply that. Dr. Hunter prepared us a, version of the ordinance that, in my background, i'm more used to, which when you are proposing to change an ordinance, you actually show the old language by either bracketing it or italicizing it and the new language is in bold. That, that is -- I don't know if there's a certain process or --

**Katz:** He did it -- he prepared that for me, as well, and so what I would recommend when council members want that, make sure your staff lets the offices know because we have a prepared copy like that.

**Leonard:** Ok. I'd like to get that.

**Brooks:** And I believe I said that with, with most of the offices and all the offices, the other thing was the mechanics of this, we are repealing and replacing the whole chapter. We weren't simply amending it.

**Leonard:** It would be good to show that then, have a copy of that so that I can compare --

**Katz:** Did you give that to, to the staff --

**Brooks:** I believe that version went out a couple of weeks ago.

**Leonard:** Did you see what dr. Hunter prepared because she was able to do --

**Brooks:** Correct

**Leonard:** What I am suggesting, and without replacing the whole thing and that makes it easier for me to understand specifically what the changes are.

**Katz:** Ok. All right. Let's move on. Item 132.

**Item 132.**

**Katz:** Roll call.

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

**Katz:** Mayor votes aye. 133.

**Item 133.**

**Katz:** Roll call.

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

**Katz:** Mayor votes aye. 133.

**Saltzman:** That was.

**Katz:** That was 133. All right, everybody, I will excuse myself for this afternoon --

**Sten:** We still need to do --

**Francesconi:** No, 130 is separate --.

**Sten:** Still need to do that --

**Katz:** She's not here.

**Sten:** We can --

**Katz:** Let's read 130.

**Item 130.**

**Sten:** Tanya and howard can give us an update if you want it. The skidmore building is a loan that we have from hud on, and we did a project with saturday market years back. We need to restructure that. Saturday market is having trouble making the payments. We have a plan to do that and are going to apply to hud for some reserve funds that are available through the enterprise community e.d.i. Fund. The issue that I think that sheila wants to address, and it's dangerous to speak for sheila, but I will try, is making sure that putting these funds out of the reserve do not -- yeah, I have her letter, do not put in danger projects in northeast. I do not believe that they do. We believe that we can address all these issues. We need to move today, so I am going to recommend voting this through if the council chooses to, even though she's not here because it's going to hurt the project

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not to do so. We have had extensive conversations with the enterprise community commission, and I think that the spirit of what they want to do, which is continue to work through the enterprise community commission to make sure that this project doesn't harm anything in northeast, I think is, is -- makes sense. Of course, this part of downtown is part of the enterprise community, or of course we wouldn't be using these mechanisms, so I think that we can work it through. I wish that Shiela was here, but I think that we are ok and I will leave it to the council if they want a more extensive presentation.

**Katz:** Ok. What's the council's choice? Desire?

**Francesconi:** I can vote on it.

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

**Francesconi:** I'm more than confident that commissioner Sten will make sure that this works and northeast is not hurt, aye.

**Leonard:** Aye. **Saltzman:** Aye. **Sten:** Thanks, I will, aye.

**Katz:** Mayor votes aye. All right. As I started, I will excuse myself in this afternoon, you know I have taken a position on cell towers, and I don't vote on that issue. That's -- the one issue that I feel strongly about, and I'm not neutral on it. So, commissioner --

**Leonard:** I won't be here, as well.

**Katz:** You won't be here?

**Moore:** This afternoon, commissioner, or tomorrow afternoon?

**Leonard:** I'm sorry, tomorrow afternoon.

**Katz:** Ok

**Leonard:** Is that this afternoon we are doing that?

**Katz:** Yeah. So Commissioner Leonard, you will chair. We stand adjourned until 2:00.

At 10:29 a.m., Council recessed.

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FEBRUARY 12, 2003 2:00 pm

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

**Item 134.**

appeal of centennial community association against hearing officer's decision to approve the application of qwest wireless, l.l.c., for a conditional use to construct a 75-foot monopole at 1546 southeast 169th place.

**Saltzman:** Ok. This is a hearing on the centennial neighborhood appeal, the land use decision. We will have a staff presentation first?

**Frank Hudson, City Attorney's Office:** Actually, I -- read the procedure.

**Francesconi:** I tried to stop them --

**Saltzman:** Turn it over to our chair. We have got the reading ready and we are ready to start the hearing.

**Leonard:** Have we had the roll call?

**Francesconi:** Yeah

**Leonard:** Oh, great, so we are going to --

**Hudson:** I will read the mambo, jumbo

**Leonard:** Thank you.

**Hudson:** Good afternoon and welcome to Portland chambers. The city is required under state law to explain how the series is conducted, which I will do now. Today's hearing is an on-the-record hearing, which means you have to limit your testimony to issues in the record. That means that during this hearing, you can only talk about the issues, testimony, exhibits, and other evidence that will present at the earlier hearing before the hearing's officer. You cannot bring up anything new. This hearing is designed only to decide the hearing's officer made the correct decision based on the evidence presented. If you try to present new evidence today you may be interrupted and reminded that you must limit your testimony to the record. The order of testimony will be as follows -- we will begin with the staff report by the planning bureau staff for approximately ten minutes. Following the staff report, the city council will hear from interested persons in the following order -- the appellant will go first and will have ten minutes to present his or her case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. This three-minute time limit applies regardless of whether you are speaking for yourself or on behalf of an organization such as a business association or neighborhood association. Next, the applicant will have 15 minutes to address council and rebut the appellants' presentation. After the principle opponent, which in this case is the applicant, the council will hear from persons who oppose the appeal. If there is no principal opponent, the council will move to testimony from the persons who oppose the appeal after supporters of the appeal conclude their testimony. Again each person will have three minutes whether you are speaking for yourself or on behalf of an organization. Finally, the scope of testimony will be as follows -- again, this is an on the record hearing. It is not an evidentiary or de novo hearing. This means you must limit your remarks to arguments based on the record compiled by the hearings officer officer. In presenting your argument, it is permissible to refer to evidence previously submitted to the hearing's officer. It is not permissible to submit new evidence today that was not submitted to the hearing's officer. The planning staff and I will be listening carefully to your argument. If it strays from the evidence or issues presented at the initial hearing, I may interrupt and remind you, that you must limit your argument to issues and evidence in the record. If your argument includes new evidence or issues, council will not consider it, and it will be rejected, and the council's final decision. If you believe a person who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that is not in the record, you may object to that argument. The

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council will provide a time at the end of the hearing for anyone to offer this kind of objection. Finally, under state law only issues raised before the hearing's 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 hearing's officer, you may object to the council's consideration of that issue. Again, the council will provide a time at the end of the hearing for anyone to offer an objection. You may proceed.

**Leonard:** Who are we going to have first? How do we proceed at this point? Do we have --

**Hudson:** You need to ask about conflicts

**Leonard:** Ok. Anybody that has had ex parte contacts in this case? On the council? I am assuming not. If, if not, we will proceed, so staff, you are going to give us -- thank you.

\*\*\*\*\*: Ready?

**Leonard:** Go ahead.

**Mark Walhood, Staff, Bureau of Development Services:** Good afternoon, I am mark with the bureau of development services. Today's hearing is to consider an appeal of the land use hearing's officer's decision in case lur 01-00737 CU. With me today if it's necessary is Sylvia cate who's a resource and the lead planner on cell site and radio frequency issues. Excuse me, it jumped far ahead. I don't know why that happened. We started out at slide 22. I apologize. I don't know what happened. I think there's -- this is embarrassing. I don't know what happened. We will get there in a second. Ok. The purpose of today's hearing is to consider an appeal of the hearing's officer's decision for approval with conditions of a radio frequency transmission facility. The appellant is Louise Cody the chair of the centennial community association. The applicant is paul, a consultant on behalf of qwest wireless who is represented by an attorney. I will let the attorney introduce himself. Council today will uphold, uphold with modifications or overturn the hearing's officer's decision. In summary, the proposal is for a 75-foot monopole with six initial and three future for a total of nine antennas with a fenced and gated accessory equipment area grade and landscaping. The facility would operate at no greater than 100 watts of effective radiated power and the site is in a residential zone. Briefly, as background the applicant had originally applied for a tower at the northwest corner of the lynchfield school site that was withdrawn by the applicant before the initially scheduled hearing due to staff concerns regarding visual and functional impacts. A revised proposal was submitted last september for a tower near the southwest corner of the site with reduced at-grade equipment enclosure and a revised landscaping plan. The staff report recommended denial based on visual impact and public benefits of the facility the hearing's officer reviewed evidence submitted on both sides and made sure the criteria were met and approved the proposal with conditions. The approval criteria are the standard conditional use of approval criteria for a tower within a residential zone at 100 watts operating at 100 watts e.r.p. or less, and the transportation element of the comprehensive plan. The zoning map identifying the site and the diagonal cross-hatching there, it's a large linear site under residential zoning. Lynchview park is immediately adjacent to the west and under open space zoning, and then surrounding the site on all sides are single family neighborhoods, also under residential 7,000 zoning. This is the site plan. If you look at the southwest corner, the large linear school site, you could see the proposed facility. The school building is in the east central portion of the site. You can see they have identified the existing baseball and soccer fields, as well as parking areas for the school. The site photos I will be showing next are taken along the west property line of the site essentially in line with 167th. This is looking north from southeast mill street up towards the site. These are the homes closest to the proposed facility. They are on the north side of mill. They are backyards face the lynchview school site. They are the closest to the proposed tower. This is taken between the two closest homes. There's a utility pole in the background that's about 20 feet southwest of the proposed tower. This is in the site just where -- southeast 167th hits the south side of the site looking west. This is lynchview park in the background and foreground. We are essentially standing on the property-line

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between lynchview park and the lynchview school site. This is turning around and looking east towards lynchview school. The tower would be located in the immediate foreground between the two outstretched shadows of the trees in the foreground. You can see the school in the distance. This is moving up a little north into the site, again, the large tree on the right central background of the picture, the radio tower would be 15 feet, facility 15 feet away from the property-line, approximately in this location. We just have some more views of the site. The same towers on the right central background up against the property-line. You can see there's ball fields, backstops, again, we are looking east into the site towards the school. There is several backstops and softball, baseball cages. Another view looking east into the site. You can see the trees on the residential property surrounding and the school building. Back to the site plan, we have covered that. The landscape plan shows a detail of the fenced equipment area and gate. The landscaping includes climbing, honeysuckle shrubs and trees. The landscaping detail on the right, you can see detail of the proposed climbing shrubs. Again, an enlarged site plan. This one also identifies the, the antennas on the tower and the equipment cabinets, and then the elevations, the 75-foot tower. The approval criteria for the review are six, the first one, applicant must prove the tower is the only feasible way to provide the service. The tower, including mounting technique, must be sleek, clean, and uncluttered. The visual impact of the tower in the surrounding area must be minimized. This can be accomplished by one or more of the following methods. Limiting the tower height as much as possible, planting trees around the tower as a way to soften the appearance, or other methods that adequately minimize the visual impact. Last three criteria, accessory equipment associated with the facility must be adequately screened, the public benefits of the use outweigh any impacts which cannot be mitigated, and the regulations of chapter 33.274 must be met. There was no issues -- transportation related issues. The hearing's officer approved the proposal in substantial conformance with the plans. We went through the following conditions, the standard condition requiring zoning compliance, basically some notes on the site plan during permitting, and a condition regarding painting the, the visible cabling and antennas on the tower with a dull matt, gray-like finish. The issues presented today on the appeal are expected to resolve primarily around three issues. The first one the appellant will argue there are other feasible ways to provide the service, and therefore, the first criterion regarding feasibility is not met. The second major issue is that the visual impact of the tower on the surrounding area has not been minimized. This is the third criterion. And then finally, the public benefits -- the public benefits of the use outweigh the negative visual and functional impacts to the site. There were other issues raised in the appeal, as well as the neighbors before the hearing's regarding maintenance of the landscaping. A litter, that the proposal would have a negative impact on property values and that the proposal would have detrimental health impacts. Alternatives facing council today are to deny the appeal and uphold the hearing officer's decision, to deny the appeal and uphold the hearings officer's decision with modifications or to uphold the appeal and overturn the hearings officer's decision. Of course, I am here for questions.

**Leonard:** No questions from council, so we will have -- who testified first? The appellant, louise cody.

**Louise Cody, Chair, Centennial Community Association:** I am louise cody, the chair of centennial community association. The reason we are appealing is that we feel the approval criteria have not been met. 33815225-b-1. The applicant must prove that the tower is the only feasible way to provide service. There is a tower north of division near is 66th avenue in a commercial area, which although outside the search ring is still close enough, we feel, for co-location. The key issue is the location site of the tower, which is in the worst possible place, at a main entrance of the school and the park. There are other locations on lynchview school property at rockwood park in gresham, at alder school, at 174th and alder, and at various -- and at various churches in the search

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ring. Three, the visual impact of the tower on the surrounding area must be minimized, and I am underlining must. This can be done by one or more of the following methods –a, limiting the tower height. B, planning trees around the tower as a way to so much the appearance, the variety and spacing of the trees will be determined based on the site characteristics, tower height. C, other methods that adequately minimize the visual impact. These criteria are not met by the applicant because the location is in an open field next to an open area of lynchview park. The site is at a main entrance to both school and park sports fields where baseball, soccer leagues play, and where children gather. Sites next to the school, behind the gym, or near the southeast corner or eastern end of the property would screen the tower more because there are trees, evergreen trees there, which are taller, and also if you put the tower against the school, that would give it some buff erring. The southeast corner where the towers propose has a -- where it's not proposed has a 15-foot hedge of 30 trees and the eastern fence line has three medium fur trees, so that's one reason we thought that would be a better location. Other methods are to switch to another location. The tower height is 75 feet tall and not 35 feet tall, so it hasn't been limited. There are only four trees that are proposed around the tower at the corners. They will not -- they are incense cedar, which are very narrow. A complete ring of trees, at least ten or more, need to be planted around the tower. The four are completely inadequate. If planted at six or eight feet, they will take years to grow tall enough, not tall enough to screen the tower for years. Public benefits of the use outweigh any impacts, which cannot be mitigated. The visual impacts cannot be mitigated at this location. The public benefits of the use do not outweigh the negative visual impacts. There are various other sites within the search ring where the impacts are less or could be mitigated. There is no evidence that another site would not be acceptable. The hearings officer's felt that the four trees, incense cedar trees around the tower needed merely to soften, quote-unquote, the tower's appearance. Staff pointed out it would take several years for these trees to provide significant screening of the tower. We disagree with the hearings officer's interpretation. Planning trees around the tower as a way to soften the appearance, the variety and spacing of trees will be determined. Originally, seven trees were red cedars were proposed, which are much wider, and since the site is too narrow, the landscaping footprint was reduced. These four trees at corners are totally inadequate to either soften or screen the 75-foot tower because they will be only 8 feet when planted and leave large vacant areas around the wall. More and taller trees should surround the tower. If the visual impact of the tower on the surrounding area must be minimized, this can be accomplished by one or more of the following methods. It follows that if these methods have failed, which I assert that they have, then the approval criteria is not met and you should deny -- you should, you should vote against the hearings officer's approval. The hearings officer's states that the applicant has met 33815225 b-b 3-c, other methods that adequately minimize visual impacts. Other methods were not adequate because the location was moved from the north to the south main pedestrian and visual entrance to the park and school fields. The new south entrance is no more, is no more acceptable than the north entrance. It is 15 feet from two back yards, and the negative visual effects to those properties cannot be mitigated. Other methods not tried by the applicant are the other sites outside of the lynchview school property. Lastly, the hearings officer's believes the applicant has met another criteria, 33815225-b-5, public benefits outweigh any impacts which cannot be mitigated. The applicant has not explored or considered other sites in the search ring, such as alder school or rockwood park. The rational for the approval by the hearings officer's is that the public benefits of the tower will be denied if this proposal is not approved. There is no consideration of the possibility of an alternate site outside the school in the search ring. The denial here at lynchview or moving it to another area of lynchview school does not mean that the tower cannot be built in the search ring or at another site. Do I still have time?

**Moore:** Yes.

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**Cody:** There was an attorney for qwest wrote a letter november 12, and I am commenting on some of that. Qwest says that it has limited the height to 75 feet and planted red cedar trees around the tower. The four trees are not red cedar but incense cedar, and if planted or insufficient in height, an amount to shield or soften the field, the trees are more narrow and tall shaped and will not shield the tower. We want more trees. Limiting the height has not been done. Some towers are only 35 feet high but this tower is 75. Using other methods. What -- which we feel were not done to minimize the visual impacts. What we would have liked was to possibly relocate to a more suitable area of the school or search ring where the visual negative effects are not as overwhelming. They relocated from the north to the south entrance, both areas were considered by staff in a preliminary report in september as unacceptable. If you remember, on page 6 of the letter, it states, this is the attorney letter, "this area is extremely difficult to cover given that the entire search ring is zoned for residential use, although staff and opponents may not want the tower where proposed, there are simply no viable options. This is not a valid argument because there is no evidence that rockwood park in gresham, which has tall fur trees, which could shield the tower or soften it or alder school or the baptist church grounds opposite the park, that they do not contain location where the negative visual impacts could be minimized. Sighting the tower 15 feet from two homes makes it difficult to minimize the visual effects. Even at lynchview school there could be a better location. Lastly, the purpose of the conditional use review, this use is not allowed in a residential zone outright. These uses are subject to the conditional use regulation because they may but do not necessarily have significant adverse effects on the environment. Overburdened public services change the desired character of an area or create major review -- etc., etc.. The conditional use review provides an opportunity to allow the use when there are minimal impacts or to allow the use but impose mitigation measures to address identified concerns or to deny the use if the concerns cannot be resolved.

**Leonard:** Thank you. You all have to be a little patient with me. This is the first hearing that I have been through. Do we ask questions at this point? Council? Does anybody have questions?

**Francesconi:** I just have a comment. Without commenting on the merits of your arguments, I want to compliment you for sticking to the criteria. I see a bright legal career ahead of you, louise --

**Cody:** Thank you. [ laughter ]

**Cody:** No questions, so --

**Leonard:** Thank you. I assume that we will hear from qwest.

**Hudson:** Council will now hear from the supporters of centennial's appeal.

**Moore:** I have ron clemenson signed up.

**Ron Clemenson, Vice Chair, Centennial Community Assoc.:** Good afternoon, I am ron clemmonson, vice chairman of the centennial association. I am going to read from my notes because I think that it is safer that way. I am here to speak on behalf of the residents in our area next to the grade school at 169th. We live in a time when space-age technology and instant communications, most of which are all benefits, many benefits to one degree or another to all of us. Having said that, it doesn't mean that we necessarily want or need to have that technology put in our back yards. In this case, next to our homes and back yards. Basically, within a few feet of those fences. First, it was tried, as said earlier, to go on the northwest side and the residents protested vigorously at our meetings, and here we are again facing with the same issue from the residents on the southwest side. They have totally opposed this idea and have been quite outspoken about that matter, and I won't tend to elaborate, but if they were here today, I am sure that they would be addressing this issue. Many of them had to work and cannot attend. The school may like the idea because it provides some revenue to be received from the cell tower company. That monthly or annual fee is not questioned, although it's real significant value, as opposed to home values is in question. But residents do have a genuine concern about the values of their property,



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not to mention their visual and livability concerns, and have a legitimate right to oppose this. That's why we are here today. At the time when high density and crime and graffiti continues to be a problem along with porno stores and drugs in the east county, as well as in east Portland, as it is in many areas of the city, we really don't want to have one more frustration added to our already considerable frustrations. So, we hope you will give this considerable consideration on your part as if you would like to have this tower in your back yards, and we thank you for your previous support in restoring engine 45 to our area for which we are forever grateful. And all the other issues, services that we have had to come to with. Thanks again, and appreciate your patience.

**Leonard:** Thank you. It is now time for the representatives from qwest --

**Moore:** They have 15 minutes

**Leonard:** You have 15 minutes.

\*\*\*\*\*: I didn't get a copy of what they submitted. I just wanted to look real quick.

**Leonard:** You do have 15 minutes.

\*\*\*\*\*: Ok

**Leonard:** Identify yourself for the record, please.

**Steve Hultberg, Attorney for Qwest:** Good afternoon. My name is steve hultberg, my address is 1211 southwest 5th avenue, suite 1500, Portland, 97204. I am the attorney for qwest. As identified in the notice of appeal, there are really two issues before the council today. One is has qwest employed one or more of the techniques identified in the code to minimize the visual impacts of the facility, and do the public benefits outweigh the visual impacts of the facility. Qwest has taken some extraordinary steps to try to get this site permanent. It has originally it was, as you heard, sited at the south -- or the north end, has now been moved to the south, that was based on staff and neighborhood concerns. That was at, that was a considerable expense and delay. Qwest has reduced the hike to the absolute minimum necessary to achieve the coverage objectives of the application. It has reduced the size of the equipment enclosure. It has responded to staff and the city forester's requests regarding trees. In short, qwest has done everything that it's required to do under the code to get this site approved. The hearings officer's found that qwest had taken all the appropriate steps to minimize the facility. The hearings officer's also found that the public benefits outweighed any of the negative impacts of the facility. What's important to focus on is the hearings officer's decision is entirely consistent with the other decisions the city has issued regarding the two standards. It is entirely in line with the city's previous decisions, and therefore, we believe that the council should deny the appeal and affirm the hearings officer's decision. There's a lot of ground to cover. Our time is limited but there are a few things that I do want to try to focus on. One, why qwest needs this site. Two, what the city's regulations require, why this application meets those standards and I will be responding to some of the opponents potent's testimony, as well. Qwest needs the site for two reasons -- capacity and coverage. Coverage refers to a geographic area you can either send or receive calls. It's basically if you are close to a radio station, you get to hear the signal clearly, the further you travel, the less you can hear. Capacity is a different issue. It relates to the ability of a cell tower or network to handle the volume of calls going through at any given time. Once you reach the capacity of the network or a specific site, you can't place calls, calls get dropped, and you can't receive calls, as well. That's the problem the network in this area is facing. It has both capacity and coverage issues, so a new site is required. When qwest, and I think every other wireless company looks for -- needs a new site, it tries to find the most efficient and the least expensive route to remedy whatever problem they are facing. New towers are always a last resort. New towers take too long to construct. They are very, very expensive, and as you are well aware, any new tower generates significant opposition. Qwest would take the path of least resistance on this if it were available, but there is simply no other alternative, except to construct a new tower in this area. If qwest could have remedy this had by putting the antennas on a tower to the south, it

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would have done so over a year ago and it wouldn't be here before you. If they could have put a tower in a commercial zone, they would have done that and we wouldn't be here before you a year and a few months later. There simply are no other options at this point. When developing a new site, the code requires applicants to consider first location and building mounts. If those aren't available, then you are steered towards employment zones and commercial zones. Qwest did exactly that. It looked at possible co-location opportunities. It looked at existing buildings in the area. None of those options are available. The buildings aren't tall enough, and the, the nearest cell towers are simply too far away to provide any of the coverage that's required at this site. So, unfortunately, this entire area is, is zoned residential and a little bit of open space. The only properties available are school properties and a church property, and what I think you will find, and I think what you heard today is that regardless of where this site is in this general area, the same issues are going to come up. There will be new neighbors that will come up and oppose the application regardless of where it is. Some opposition will go away, but new opposition will arise, and that's, frankly, has already happened in this case. The neighbors that first opposed it no longer do and now new neighbors oppose this. In terms of the applicable criteria, the code requires that the site -- the impacts be minimized. What the standard says is that the applicant has to look at and try one of three methods to minimize the site. The code does not require that it be mitigated to any certain standard, it just says that it has to be minimized by using one or more of the identified methods. It's not mitigated or minimized to the greatest extent practicable, just says, if you have to build a tower, do one of these things and try to minimize the impacts. Generally, they relate to reducing the size of the tower, planting the landscaping, painting the tower, things of that nature, and then there is the catchall, or other available methods. In this case qwest has limited the tower height as required. It is agreed to plant trees around the facility, and regarding trees, if there is a concern about the number of trees, qwest followed both the staff and the forresters recommendation on the type and quantity of trees. They are open to suggestions, the quantity and type of trees, but that was what was suggested and that's what qwest went with on this. Qwest has also reduced the size of the enclosure, and most importantly it listened to staff and the neighbor's concerns initially and moved the site to a location that, that at least initially was indicated by staff and by the neighbors would be a better location. In order to meet the standard qwest only has to do one of those things, but as the hearings officer's found, qwest did all of them. It satisfied all three of the standards, and therefore, satisfied the general standard. Regarding the public benefits, I think that that is the other element here. What this requires is that qwest demonstrate the public benefits outweigh the impacts which cannot be mitigated, and I think that everyone is clear that it's the height of the tower is the impact. There's no -- there's no mystery you can't hide a 75-foot tower. The code recognizes that there will be impacts. The problem that -- the network in this area faces that people can't receive calls, people can't make calls, and calls are being dropped for people who are driving through the area. It's a significant issue for qwest as a wireless provider. They do have to remedy that. Cell phones are no longer really the realm of the rich or just for, for people's recreational use. Cell phones are a critical component of, of our life at this point. They play a critical role in our economy. They keep families connected. Business people entirely rely on cell phones today, and I think that many people would, would be unable to function in their jobs without the use of a cell phone. In terms of emergency services, cell phones account for over 100,000 calls to 9-1-1 each year. That's across the nation. Cell phones have drastically reduced response times to emergencies and for crimes. So, there are significant public benefits to the use of cell phones. I think you will also hear from the school district that there is a public benefit providing a stream of money to the school district. There's no mystery that, that the budget for schools is quite lacking, and that will certainly help the school district. As I mentioned before that the hearings officer's decision was entirely in line with the city's previous decisions on both of these standards. In terms

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of the public benefits, there are many, many towers in the city. Many are near residential districts, and many towers are actually taller than this proposed facility. Many towers can be seen from homes, from schools, from parks, and from streets. Yet, the city has consistently held the facilities of this size and of this nature, the public benefits do outweigh any of the impacts. And there's -- there's nothing about this site that would necessarily differentiate it from any other site that has been approved in the city as generally the same type of impacts and has the same benefits. So we think that the hearings officer's decision was entirely appropriate in finding that the impacts, the public benefits outweighed the impacts. I think that a decision changing that would be a great deviation from the city's policy, and I think that it would also open up the possibility of discrimination under the telecommunications act because other providers have not been required to adhere to a different standard. In response to some of the opponent testimony, again, if there are suggestions about trees and landscaping --

**Francesconi:** That wasn't a threat, was it?

**Hultberg:** It was not a threat, but as I mentioned to you the city attorney, it's something that I have to get on for the record.

**Francesconi:** It kind of was a threat.

**Hultberg:** It was not intended as a threat but it's something as an attorney I have to get on the record if I ever want to raise it again. It's not intended as a threat, but by the same token, I think it is true, so it's something that I do feel is appropriate to say. With respect to the mineralization standard, the opponents suggested we minimize this by building elsewhere. That's not what the standard says. The standard says employ one of these three methods. Qwest has employed all three and then some. So, and moving it is not really one of those. And if it is, qwest has selected an alternative site based on the earlier concerns. As the code requires, for the council to overturn the hearings officer's decision, the opponents have to demonstrate some error that the hearings officer's made or demonstrate why the evidentiary record is not sufficient to support the hearings officer's decision. With respect to the public benefits and impacts, I don't think that there is any evidence either cited or explanation of why the hearings officer's decision was deficient in that respect. Again, with respect to the mineralization, I think the record is, is very clear that qwest has satisfied all three of the requirements. For these reasons, we hope the commission or council will, will affirm the plan -- or the hearings officer's decision. I will be happy to take any questions.

**Saltzman:** I was curious -- well, two questions. One is did you look at the southeast corner of the site. The second question is we now have a policy of encouraging location of the public rights-of-way of, of cell phone facilities and was that examined as a possibility, too?

**Hultberg:** I can answer the first one based on the record. The second one I will admit the evidence is not in the record to respond to that question but I am happy to do so. Other sites were looked at on the school property, and I think you will hear testimony today from the school district that the only two sites that will work with the school are with the first northern site and the, and the southern site. Any other location on there creates problems with the school, either the school facilities, either being in close proximity to the school or to the other features of the school, including the playgrounds and dugouts and ball fields, and I think that the school district can speak to that in more detail. With respect to your second question -- when this application was filed, that policy was not in effect. There was, in fact, a moratorium on locating anything in the right-of-way.

There's also a policy in the city to reduce the number of towers, and this site could not be done with just something in the right-of-way. Again, part of the problem we face is one of coverage, and to get that and get above the trees and create a line of sight with other facilities, it has to be up at a certain height. That's why it won't work in this case. That, I don't think, was in the record, but that does respond to your question.

**Saltzman:** Thanks.

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**Leonard:** Further questions?

**Francesconi:** So from your standpoint, if the school district ok'd it, the school, near the school where there's more large trees, that would have been ok from your standpoint?

**Hultberg:** I believe that functionally would work, and I don't see why that would be a problem. But, I think those are just not options for the school.

**Francesconi:** Ok.

**Leonard:** Questions? I have a couple.

**Hultberg:** Certainly

**Leonard:** How do you determine the search ring? The boundaries of the search ring?

**Hultberg:** I can give you a general response to that. We have a few experts here if you want some further information

**Leonard:** The nature of my question probably goes fundamentally to one of the criteria that the hearings officer's ruled on where it relied on the, the, what was represented to be the search ring as one of the reasons for not co-towering at the site on 166th and division, so probably going to need to understand technically how you, you draw that ring.

**Hultberg:** Technically how that's done with an existing network, you can, through both computer programs and where there is an existing network, as in this case, you can determine graphically where the signal is weakest and where it is strongest, and what it will show you, and I think -- I don't know if it's in the hearings officer's decision, but certainly in the record, there are plots in there that show weakness of coverage in a certain area, and from there, you can demonstrate, if you put a new tower in, what type of coverage you would get, and the radio frequency engineers based on all those factors, determine a certain geographic location within which the tower has to be located.

**Leonard:** I understand that. What I am trying to understand is why is the ring right there? What about the analysis that you did wouldn't have included the ring to include the tower that exists currently on 166th or so and division that this could have been located at? As I understand it, one of the criteria is where that's possible, you co-locate towers.

**Hultberg:** That's correct

**Leonard:** So what I am trying to get at is precisely why didn't that happen?

**Hultberg:** If I can turn back and see if I can have one of my experts answer that.

**Brian Wells, Engineer for Qwest:** My name is brian wells, I am at engineer for qwest wireless, 5950 northeast 122nd avenue, 97230. Why we originally looked at that site, in this specific case, what we were trying to do is relieve some capacity of two surrounding sites. The site on division, if we went that far south, wouldn't provide the capacity relief we needed on, on the one to the north, which is site 37.

**Leonard:** Would it provide the coverage from that site into the area?

**Wells:** It would provide coverage but we need some capacity relief on 37 beta. If we don't get this capacity relief on 37, right now it's at 95%, and before I came here I looked in the last four months, it's increased 25%

**Leonard:** Is there some technology available that allows existing polls to -- existing poles to increase their capacity?

**Wells:** No. Our technology has a soft limit. As you get more and more customers or users going through a certain area, the coverage kind of -- it kind of breathes and kind of contracts, so as you get more and more customers, the coverage degrades and the first thing that happens is you are unable to place a call or receive a call. As the capacity keeps going up, you -- you start dropping calls

**Leonard:** You can't add additional dishes to that site where the capacity is approached, the maximum capacity to relieve some of that capacity?

**Wells:** In this area, we can't add additional sites

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**Leonard:** I am asking you on the overcapacity -- the areas you have in existing tower where you are trying to reduce the capacity, is it technologically possible to add other dishes to pick up some of the capacity?

**Wells:** Right. Yes, we could do that. If we added capacity to all the surrounding sites, if we added additional carriers to the surrounding sites, but we still are faced with the initial problem that we have weak coverage in some of these areas --

**Leonard:** Which gets me to the next point if you can, as I understood it, the 166th and division site based on what you said provides you the coverage but it didn't relieve the capacity, these other sites, but technologically, am I understanding that you say technologically you could increase the capacity by adding dishes to the other sites and the coverage part could be accomplished by co-locating at the 166 --

**Wells:** No. We could add another carrier to address capacity, but the, the division site still wouldn't provide the coverage we needed --

**Leonard:** That's different than what you originally said in your first answer. You said it did provide the coverage but not the capacity --

**Wells:** Not in the entire area, it provides some coverage, yes

**Leonard:** That's different than what you originally said.

**Wells:** I apologize. It doesn't provide the coverage where we need the additional coverage.

**Leonard:** Thank you.

**Hultberg:** I think as a practical matter, as I mentioned before if we didn't have to be here in front of you, if there were other options available, we would be there. Towers, new towers, especially in residential zone, are an absolute last resort, and that's why we are here because this is a last resort. When there are less expensive options available, those are taken. This is, this is the most expensive option that we have. It's one we don't want to do, but it's one that we have to do

**Leonard:** Is it more expensive than increasing the capacity of the existing towers and then co-locating this new dish at the 166th and division site? Did you do that analysis?

**Hultberg:** I don't know if that analysis was done, and I know that analysis is not in the record.

**Leonard:** Further questions? Do we have additional testimony?

**Moore:** We have Rick Larson signed up.

**Rick Larson, Director of Business, Centennial School District:** My name is Rick Larson of. I'm the director of business and operations for Centennial School District, 1815 Southeast Brooklyn, Portland, Oregon, 97236. I will be brief and make a couple of quick points. Our board of directors approved this agreement with Qwest Wireless basically because of the need for revenue. The revenue would be dedicated to our participation in the center for advanced learning, which is a professional technical school that we are going into in partnership with Gresham, Barlow, and Reynolds School District. Another public benefit from this tower to the school district is that it provides emergency electrical generator service and a radio transmitter for our emergency radio system that provides two-way radio between our schools in the event of failure of regular telephone and typical points of communication. I want to talk a little bit about the location, the particular location was determined in collaboration with the school principal. The Lynch Little League, I met with the president's wife out on the field and we talked about where it could go that would not interfere with the use of the fields by then. And also the Qwest representatives and based on the previous recommendation that was provided by Mark Walhood after he indicated his concern that the location on the north side of the field, and he gave a hand sketch of some areas that potentially would be more acceptable than the original proposal and we used that sketch, and in using this particular location. With regard to the southeast corner, there's a formal opening in the fence for students to walk across the field and walk out to 174th and a public crosswalk on the road with a flashing light over it. A major route for the neighborhood children to walk to and from school. So,

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ow placed it -- it was in conflict for the walking path for students to school. South of the school, south of the gym is part of the emergency exiting system of the school. For example, in a fire drill, we need as much space as possible in that particular area in the event of evacuation of the school. Other locations talked about would also provide some conflicts with the environmental education, curriculum, science curriculum or areas used for recess and other playground-type activities. Thank you. Any questions for rick?

**Francesconi:** This is appropriate and stop me if it isn't appropriate, but you get a benefit. The school district. You said it in your testimony. You get money, which is important, especially now, and you get a backup emergency capacity, I think you said, but then you want to place it where it's going to impact the neighborhood. So, you know, if you -- if those were not options, and I am not saying that they are not, but if they were not options to you, those other locations, given the benefit to the school, do you think that you could find place to put this thing? If you didn't have any other options or would you just say forget the money, forget the benefit to the school district?

**Larson:** We would give up the money.

**Francesconi:** Ok, so the benefit must not -- I mean, although important, you are willing to do that rather than find another location.

**Larson:** The other locations suggested all take a serious deterioration on the operation of the school, which is our primary mission, and we are not going to sway from our primary mission, which is educating.

**Francesconi:** I appreciate your candor. It also must mean that the backup capacity must not be that big of an issue, either.

**Larson:** It is, but we will have to find another way. We could -- we will look as a matter of other options if it doesn't happen.

**Francesconi:** Thank you.

\*\*\*\*\*: There is always options in life.

**Francesconi:** Ok. Thanks.

**Leonard:** Thank you. Questions?

**Saltzman:** I am looking at an aerial photograph and a drawing that shows the property-line, so you don't own the property that goes to the east --

**Larson:** I believe the city of Portland owns that. To the east?

**Saltzman:** You just own to the east --

**Larson:** Everything from the east, the city of Portland owns from the property-line west.

**Saltzman:** So your entire site to the east, is that open space to the street corners?

**Larson:** No, to the east is the school. They had a -- in the initial presentation that the a shot that showed the school in the distance.

**Saltzman:** I am saying on the east face of the school to the street, I am looking at a field, is that field all part of the school?

**Larson:** Yes, between there and the school is all fields, yes.

**Saltzman:** So that southeast corner is an inferior location?

**Larson:** It is because on the, the southeast corner that they are talking about is on the other side of the school because there is another field beyond that. It's a soccer and little league field, and that was improved, I believe, three years ago by a volunteer project by the little league, and so we didn't want to take up the field that they just spent money to improve, and then beyond that in the very corner is the walk-through gate that leads out to the crosswalk that goes out across 174th, and we don't want to block that. There would be insufficient room on the north side of that field that's east of them, of the building, east of the school building.

**Saltzman:** Insufficient?

\*\*\*\*\*: Yes, sir.

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**Saltzman:** Ok.

**Leonard:** Further questions? Thank you.

**\*\*\*\*\*:** The appellant gets five minutes to rebut.

**Leonard:** Ok. Louise -- five minutes.

**\*\*\*\*\*:** Can I get one minute of clarification testimony?

**Leonard:** You bet.

**Hultberg:** The question before was posed whether or not qwest had taken the steps necessary to try to maximize what it had out there to fix the problem. The answer to that question is yes, all the steps were taken to maximize what is existing out there, and that's -- we can't go any further, so --

**Leonard:** I don't quite understand what you are saying.

**Hultberg:** The question is -- could you add additional components to towers to beef up their capacity, I believe that was part of your question, and the answer to that is yes, those steps have been taken.

**Leonard:** And specifically what does that -- yes, those steps have been taken, did you make an application to co-locate at the other tower?

**Hultberg:** It's not a function of co-location, it's towers are approved with either a certain number of antennas or a certain type of capacity, and --

**Leonard:** Did you apply to increase the capacity or add --

**Hultberg:** It's not a question of needing to apply for that. That can be -- you can maximize without going through a land use process

**Leonard:** You are saying that you did those things?

**Hultberg:** Those things have been done

**Leonard:** And can you explain to me what that means?

**Hultberg:** I will have to pull up someone to tell you what that is, but yes, I would be happy to

**Leonard:** Did somebody just tell you that?

**Hultberg:** As a point of clarification, yes.

**Wells:** Right now how the existing system is --

**Leonard:** Can you pull that up close to you? Thanks.

**Wells:** How the existing system is laid out we have a single carrier on all the surrounding sites. We've done -- we have a limited capacity. We have optimization things that we can try to maximize the capacity of the existing --

**Leonard:** Did you do those things?

**Wells:** Yes, we have changed antennas. You can put down tilts --

**Leonard:** Where did you change the antennas at? At which locations.

**Wells:** On the surrounding sites

**Leonard:** Where are those?

**Wells:** Site 37, I don't know the cross streets

**Leonard:** How do you know those were changed?

**Wells:** We documented these things that we have done to the existing sites to maximize capacity, and we have a site data base that indicates different parameter changes we make to stretch the capacity as far as it will go.

**Leonard:** What limits you from stretching it beyond the current capacity that a it is? What is limiting factor?

**Wells:** The limiting factor is the number, in technical terms, the erlings that a sector can handle. Right now our -- each sector can handle capacity of what they call the 14.9 erlings. Right now we are at 14.2. Beyond that, we start running into capacity problems that will result in being unable to originate calls, receive calls, and drop calls

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**Leonard:** Let's assume that you are in a fixed geographic area that has a number of sites. Just, just pretend you are drawing a circle, and you have exactly the number of cell locations you need to provide adequate coverage, and then you approach that capacity level within that area, and an option is not adding another site because you have adequate coverage, but you have to do something to increase capacity. What do you do in those cases?

**Wells:** That's what I thought that you were referring to earlier. We have done all the first things, the authorization. If we don't --

**Leonard:** I am asking you what you do. You told me what you did, I am asking you --

**Wells:** I am trying to get there. We have done the work. We stretched this carrier as far as it can go, and if we had all the coverage we needed in a certain geographical -- I can't talk now, sorry. A certain area, if we didn't need any more coverage, you would go to adding another carrier to all the surrounding sites. That's how you increase your capacity up. More than the individual site will, will handle.

**Leonard:** So you can do things to increase, so the capacity can be addressed technologically on a given site. You can increase the capacity, so the second issue is coverage?

**Wells:** Right

**Leonard:** Let's transfer over to there for a second. The -- because originally I asked you what the problem was with using the 166th and division site, and you said capacity, and now you are saying it's not that, it's coverage.

**Wells:** I'm saying it's capacity and coverage.

**Leonard:** Ok. Let's go back because I want to be real clear I understand what you are saying. I thought I understood you to say that there was some ability to increase capacity beyond what it currently can handle technologically but that doesn't address the coverage issue. Am I getting that right?

**Wells:** Right

**Leonard:** So just tell me when I get this wrong, so if that's the issue, and then we switch over to ask the question then, ok, why can't you co-locate on the 166th and division site, you are telling me the issue is really coverage, not capacity because that's too far out of the --

**Wells:** That would provide the coverage we need. That site doesn't even provide the coverage where we need it to be improved.

**Leonard:** Originally you told me the issue was capacity but now I am hearing you say it's coverage.

**Wells:** In my previous documentation, I have always said it is capacity and coverage.

**Leonard:** Is that submitted to us here?

**Wells:** I believe so

**Leonard:** I have not seen that. I don't know -- it is? I think I could go on like this and probably beat a dead horse about getting into the -- but I am curious on the search ring part. It is drawn, and then how do you decide -- how far are we on the outer limits of the ring from the 166th and division site, how many feet?

**Wells:** I don't have it in front of me. I don't know off the top of my head

**Leonard:** Does anybody have that information?

**Wells:** Could you repeat the question?

**Leonard:** How far -- I am looking at a map that has a black line drawn on it of a search ring, and I am asking how far -- what is the closest point of the search ring to this other site is located at, that is suggested as a low, co-location site?

**Wells:** Where is it? It's --

**Leonard:** How many feet away are we?

**Wells:** Between the site? We are at now and --



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**Leonard:** No, actually I am asking -- have you seen the search ring map? There's a map --

**Wells:** I am looking at it.

**Leonard:** And I am asking where the closest point, the edge of that search ring is to the site that we are talking about, co-location at 166th, I believe it was north of division?

**Wells:** Right. It's on the edge of the search ring.

**Leonard:** How far?

**Wells:** I don't know. It's close to it -- I don't have the feet.

**Hultberg:** From the information we can gather, it is roughly over 2000 feet from the edge of the search ring.

**Leonard:** From the edge of the ring, the closest edge to the co-location site?

**Hultberg:** Correct.

**Leonard:** And what is the, what is the, I mean, this is all new for me. What is the typical coverage area of a cell site? Do you measure that in terms of square miles or radius or how do you determine the coverage, maximum coverage area?

**Wells:** It varies on your objective, on, on the surrounding -- in the rural area, it's, it's -- it would be one thing. It's, if it's an urban area, they are close together, suburban area, it's --

**Leonard:** Further apart?

**Wells:** Further apart

**Leonard:** What determines the distance apart from say a rural area to an urban area? What's -- how do you decide the distances?

**Wells:** Well, capacity of a site is determined on a number of users. In a rural area you will have fewer users so you can go --

**Leonard:** In terms of coverage now, not capacity, coverage. How do you determine the coverage, if it's different in a rural area versus an urban area. How do you decide that?

**Wells:** You decide coverage based on how many users you think a particular cell is going to accommodate.

**Leonard:** I understand that. I am trying to get at what is -- what is the coverage area of one of those cell sites? How -- what is that?

**Wells:** In a suburban area?

**Saltzman:** Of this area.

**Wells:** In downtown?

**Saltzman:** No, where we are, the property out here, centennial.

**Wells:** Typical coverage is about a mile radius, a mile and a quarter

**Leonard:** What could it be compared to that in a rural area.

**Wells:** If there is no trees and it is flat, you could have, at the frequency, eight, nine miles. Depends on the terrain.

**Leonard:** Thank you. Is there other --

**Moore:** No one else signed up.

**Leonard:** Louise.

**Cody:** My name is Louise Cody, and I am from Centennial. To answer Randy's question, one day I drove from Division to Mill. I didn't go from 168th, but on 162nd from Division to Mill, and it was, I guess, for, when you do the mileage, you get these things that said four, so I suppose that's for a tenth of a mile, so if you can figure that out. Ok. One of the things -- hearings officer's have routinely approved cell towers but they are usually in Portland, as far as I know. The highest percentage are in commercial and industrial. They are very few in residential areas. And there was a mistake in the applicants said that they moved from the north entrance to the south entrance based on staff's recommendation. You have a diagram there, a map, a single map that was handed out by the council clerk, and on it, you will see the entrance. What mark has done is he has made x's.

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Those are the areas, long rectangular x actuality these are the areas where you can site. The entrances and the north entrance has the same problems and the south entrance. They are in the main axis to both the school and the park, and they are the pedestrian and visual entrance. These areas were not to have any of these areas were not to have, to minimize the effect, negative effects, they were not to have a cell tower near them. So I wanted to clear up that, and you can ask mark about that. That was his preliminary documentation, suggestions where a better place to put the tower was, and the entrances were not, so the, the south entrance was not recommended by staff. The hearings officer's --

**Francesconi:** Before you leave that point, but is that all on school district property?

**Cody:** Yes. But the entrance -- the park and the school entrance are the same at 162nd. They are adjacent to each other. But when you come in at 162nd, there's the school on the east and on the west is the park. Lynchview park.

**Francesconi:** So I think you are saying, but you correct me if I am wrong, that the school district is wrong in their testimony that there are other spots that they could have put it without interfering. Is that the gist of what you are saying?

**Cody:** The school says it can't so I am not arguing with the school where they can and cannot, but what I am saying is the lawyer for qwest said they did everything that they could to improve the visual -- in other words, to make it better, and they said they put it where staff said, well, the staff said don't put it at any entrances. So, the entrance -- near that entrance is ok with the school. But, it is not ok with staff. The hearings officer's believed that you could minimize the -- soften the tower by planting trees around it. He erred in thinking that four trees, and you have -- there was a diagram in the record on the corners, you have a rectangular wall surrounding the tower, which is 16 feet by 20 feet, and on those corners you have four trees. Those four trees, the applicant says, those four trees shield or soften the tower, and that's impossible. There is no way that four trees, if you want to shield or soften the tower, you would not need to make a ring around the walled colors, so the hearings officer's, I believe, is incorrect saying that the trees -- soften the tower. Secondly, the big issue here is public benefits of the site, the public benefits outweigh the negative impacts that can not be mitigated. We, over and over again, the hearings officer's and the applicant were hearing, if you denied this tower here on linchfield property, you are denying the benefits of the tower, and no one has mentioned the -- the staff -- not staff, but the applicant has not mentioned rockwood park. If you see the photographs that you have, it's a loose photograph up in the east, the northeast corner is, is a park, and that is called -- that's in gresham. It's longwood park and has tall fur trees which could shield --

**Francesconi:** I am glad you said gresham. I am glad you added gresham. [ laughter ]

**Francesconi:** It's an important fact. [ laughter ]

**Cody:** The other thing is alder school, which is on alder on 172nd and it is north. That is a big open square. It also has fur trees and it seems to not be such a narrow lot as linchfield property. And I believe that the hearings officer's erred again when he said that the public benefits outweigh the negative visual impacts, and both the applicant and the hearings officer's have said if you don't build it here, you don't build it. Well, we know that both rockwood park and alder school are in the search ring and there has been no, no discussion on why, as other methods can be used, why these sites were not explored. And the reason I am bringing other methods up is because I feel that, that you have to meet -- you can lessen the impact of the visual effects by one or two. One is limit the height or two, plant trees around it. One, they haven't done a very good job of planting trees around it, and so I feel they failed that criteria and the third other methods of minimizing, I feel they need to use since they haven't used the others, and we haven't heard a word about rockwood park. You know, maybe it's in gresham and gresham has some rules that they don't want cell phone towers.

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**Sten:** One question -- is there an amount of trees that you would think got the job done. I hear you on the trees.

**Cody:** Well, actually, yes, I will answer that, question. It is surrounded with -- originally they took trees, cedars -- they are very wide, 60 feet wide. There wasn't room between the 15 feet between the facility and the line and the backyard to put trees, so they said -- people said well, there really isn't room for the landscaping, so instead of saying this is a bad place, we can't do adequate landscaping, the idea was, well, we will do less trees and we will do another type of cedar, which is very narrow. The fact that you are doing a narrow cedar means you need more of them, not less. Originally there were seven western red cedars and arborvitae that surrounded the tower. Now we have four at the corner, a kind that aren't very wide and I would say eight or ten trees to surround the whole, the whole thing so you couldn't see it. But as staff said, for years and years the trees, unless you plant trees larger than 8 feet tall and more trees, they are going to take years to grow. They only grow about 2 feet. So, the idea is to shield the tower and that will take a very, very long time.

**Sten:** Thank you.

**Cody:** So, I don't want you to get -- I don't want you to get the impression that just planting trees will solve the problem because this is a huge open area. Lynchfield park is wide open. It's soccer fields, and the school baseball fields are wide open, too, so there is this huge expanse of open area, and then you are talking about everyone who enters both the park and the school grounds at a main entrance is going to see this. Great.

**Leonard:** Thank you. Anything else?

**Moore:** That's it.

**Leonard:** Mr. City attorney. What do we do from here?

**Hudson:** Council discussion

**Leonard:** Council discussion.

**Francesconi:** I have a question of staff. If that's all right. On your staff recommendation, was it your recommendation or some other staff recommendation?

**Walhood:** That was my recommendation.

**Francesconi:** And I am reading the hearings officer's, and a lot of this is my ignorance, but it seems like you -- on both the argument, the argument -- let's see if I get this right, of minimizing the visual impact on the surrounding area must be minimized as well as the test to the public benefit versus the harm that's done. I think you come down to not, on your recommendation, that there's an alternative available, which is the school property. Am I understanding that right? That seems to be the facts, at least as the hearings officer's cites it. On both of the tests you rely on this other site. Is that fair?

**Walhood:** We were looking at alternative locations on the linchview park site, not the alderwood -- or rockwood park.

**Francesconi:** So it's not the school site that you were talking about? It was the park site?

**Walhood:** No. Excuse me. On -- in the staff report the, the issues about visual impacts and public benefits related to the fact that we, we felt, and based on the neighborhood impact -- testimony, about how the site is used, the school site, that there were other alternatives south of the school, north of the school, or immediately up against the school.

**Francesconi:** On school property?

**Walhood:** On the school property.

**Francesconi:** Right. That's how I took it. But where I am struggling, I don't know if this is a legal or staff question, if the school has said and the hearings officer's said it two or three times, if the school property is not available, even though you think it's better and I think it's better and the

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neighborhood thinks that it is better, does that meet the legal test that we can use? The hearings officer's says no, you appear to say yes, and that appears to me to be more of a legal question.

**Walhood:** I would agree, I think the --

**Francesconi:** Let me rephrase it. If it is not available, can -- does your opinion change?

**Walhood:** I think, like most of our cell tower visual impact criteria, there is a lot of subjectivity, but that relates exclusively to the visual impact. I was aware that the school district would not allow or was not interested in having the cell tower closer to the school or in other areas on the site east of the school, north, northeast, southeast of the school. But, I didn't, in the staff report, and again, this is, this is a different opinion than voiced by the hearings officer's but I didn't feel that I could consider the school districts, you know, lack of interest in having it anywhere else. I wasn't looking at --

**Francesconi:** Well, that's what it looks like. Now I do have a legal opinion. If it's not available -- I want you to assume, and I am now not looking at you, and I guess that I am looking at you, the city attorney, if it is not available, I want you to assume that the school district's testimony is truthful, and they are not -- that's the only evidence in the record, so it's actually not practically available, even though -- maybe it was a better site. Can we consider it all, the failure to use that site on the issue of -- failure to minimize? It doesn't seem to me like we can legally do that.

**Hudson:** I don't know. Assume the site was --

**Francesconi:** I'm sorry?

**Hudson:** You said we ought to make certain assumptions, and I am trying --

**Francesconi:** The assumption is that the school district is not going to let them put a tower on their property. Other than these other two locations.

**Saltzman:** We can ignore that, I think.

**Francesconi:** Can we ignore that? I guess, that's what I am asking, can we ignore that?

**Saltzman:** They can change their mind about doing the deal.

**Francesconi:** But there is a test on availability, I think. I need some help here.

**Hudson:** I guess if it's unavailable, then you can't consider it, I don't think. Does that answer your question?

**Francesconi:** Yeah, I think it actually does. Unfortunately.

**Leonard:** I did have a question. Did you hear the discussion that -- I mean, I am not technically probably as proficient as I should be on how cell phones function, but did you hear that discussion that I had with the --

**Walhood:** Coverage versus capacity?

**Leonard:** Do you get into any of that kind of, of, of analysis in your decision?

**Walhood:** I think as staff, what we are able to do is we, we require that the co-location analysis be submitted by a registered engineer as they did, and essentially, the criteria relating to the feasibility and both staff and hearings officer's agreed that they had a defined search ring within which the only way to provide the service that, that they are looking for is to establish antennas at a 75 feet above grade. That doesn't say it has to be a tower at this particular spot on the ground but it does say in order to get the service they want, they need a 75-foot elevation above grade within their broader search ring. I don't know if that answers your question

**Leonard:** Is that analysis that you do, is it looking at coverage or is it looking at relieving capacity on the other towers?

**Walhood:** At both. As the engineer said, the way that they phrased it in their application, it was both coverage and capacity.

**Leonard:** And then do you -- and so you looked at that kind of an analysis and determined that that, that that ring that I saw was an appropriate ring?

**Walhood:** Yeah. We don't have radio frequency engineers on staff, but we --

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**Leonard:** You took the assumptions that they gave you and accepted those, and is that an analysis that is done and paid for by the applicant? For the tower?

**Walhood:** It's included in the application. It's the qwest engineer, and that's, that's similar to all, all cell sites

**Leonard:** Are you familiar with the technical aspects of, of --

**Walhood:** Not overly familiar.

**Saltzman:** Is there anything in the record that showed consideration of rockwood park as a location?

**Francesconi:** Or rockwood school.

**Walhood:** There was a discussion -- I don't recall whether rockwood park was explicitly addressed, but I believe that that falls outside --

**Saltzman:** The ring?

**Wells:** Actually, I don't recall.

**Saltzman:** Well, the photo we were given by centennial shows the search ring north of the park's border, so sounds like the park would be inside.

**Walhood:** I'm not sure.

**Saltzman:** So there is not like an alternative analysis that needs to be submitted when an applicant proposes a specific location within a search ring that says that we also looked at, at other sites? Other geographic locations?

**Walhood:** They did do that. They did rule out the other sites based on a detailed list of feasibility, whether the site was not available to them through the private negotiations --

**Saltzman:** So there was an alternative --

**Walhood:** Right.

**Saltzman:** Ok. I am ready to make a motion.

**Francesconi:** If it is appropriate, I don't know if the rockwood park, rockwood school thing -- I guess I would like to hear qwest's position on that, but if it's all right with the council.

**Paul Slotemaker, Representative, Qwest:** I am paul slotemaker. I am the representative for qwest wireless on this application. The address is 5950 northeast 122nd avenue room 221, Portland, Oregon, 97235. As far as addressing the other areas on that aerial photo, I think I am familiar with it enough to -- so I don't need it in front of me. But --

**Francesconi:** Here. You shouldn't have to

**Slotemaker:** So the areas that we are discussing is the -- was it the rockwood school and the park?

**Cody:** Alder school and rockwood park

**Slotemaker:** The other school field is very similar to the subject school field, houses lined with single family residential properties, so you can run into the same issues there, and then the, the rockwood park is, is -- it's similar. The whole search ring is basically zoned single family residential both on the Portland and gresham side of the search ring, and you are not going to be able to escape the being close to single family residential dwellings in this area. So, of the few larger properties out there, we felt that lynchfield park was a suitable candidate. There is only a few out there, and you will run into the similar situations. I don't know if that answers the question.

**Francesconi:** So you didn't look at the other places.

**Slotemaker:** We did look at those areas. When we go out and look for a site, we look at numerous areas but eventually you have to land on one of them, and so all things being equal on the others where there is single family residential everywhere, we decided to go with the lynchfield park elementary school.

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**Hultberg:** Just as a point of clarification, there is no alternatives, analysis required either for the approval criteria or in the application, itself. That's done as a matter of course just through, through site selection. That's not a requirement or a standard approval.

**Saltzman:** You did submit that? Even though it is not required, it was submitted as part of your application?

**Slotemaker:** We addressed -- I know this addresses like the greater Portland baptist church. The real perks of the search ring are to show the single family residential nature of the area, and to address why, like a roof-top antennas on the church didn't work, and I think that this aerial photo was part of a, the radio frequency engineers analysis of the area which addressed like the church and why it was too short. So we didn't go in depth with like an alternate site analysis on the rockwood park or the other school.

**Saltzman:** It was more toward proving no other existing site could, could --

**Slotemaker:** Yeah. This aerial photo is to address why the baptist church building didn't work.

**Walhood:** I will mention that there is a development standard, the tower-sharing development standard that requires applicants to submit evidence with a new tower that application was made to locate on existing towers or other structures with no success. Or that location on an existing tower or structure wasn't feasible, and that was covered in their engineering submittal, so they are required per the development standards to make a statement that they looked elsewhere.

**Francesconi:** Did the hearings officer's address the question of the other park, rockwood park? Is that in there? I didn't see it.

**Leonard:** Which park?

**Saltzman:** Rockwood.

**Francesconi:** The availability of another park. Did the hearings officer's talk about this?

**Hultberg:** He did a little bit in conclusion that there are unpopular sites, and I believe in the conclusion section [ inaudible ] I think he appearing that the alternative sites -- he acknowledged that the alternative sites will run into the same problems as the present location, but I don't think he went into an analysis of the specific sites because that really wasn't part of the application.

**Francesconi:** Where I am struggling is I believe that if the school site had been available, I was going to deny this, this thing. I was going to uphold the appeal, I am not sure what I am going to do now because now all of a sudden there may be other sites available, but I don't feel like I can use the school site, like the staff did, to deny this. I don't think that I can do that legally. But now we have got the other issue raised of the park and other sites. Can I use those? Can I guess, do we have the authority to interpret what it means to mitigate that broadly? That's the question.

**Hudson:** State law --

**Francesconi:** I'm sorry?

**Hudson:** State law gives a lot of deference to council interpretation of the code. So, I think that the answer would be yes.

**Hultberg:** I don't mean to interrupt and I will go back if you would like me to, but I would like to respond to that. Although the state law does give you great deference to interpret your code, the plain language of the standard says that the applicant shall use one or more of the following to minimize it. It doesn't say minimize [ inaudible ] it doesn't say anything about comparative analysis. What it does say is use one or more of these. Qwest used all three of those, and I think -- I think that it's clear that they met that standard, from my perspective, there is very little weight to interpret around that.

**Francesconi:** How about on the question of comparing benefits, you know, versus harm? Can we interpret it broad enough the way the city attorney says?

**Hultberg:** You are --

**Francesconi:** To take in other sites?

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**Hultberg:** In my opinion, you are also bound by your previous decisions. This, this standard has been reviewed and approved and a -- in a number of cases, and there is nothing that distinguishes this site from other sites. If you are looking at qwest moving to an additional site in this area, we will be here a year from now arguing the same thing. I mean, we will run into the same problems. So, personally --

**Leonard:** Unless you were to use the tower that currently exists on 166 and division.

**Hultberg:** I think the evidence is clear, commissioner, that that does not work. It does not satisfy both objectives of the application for capacity and for coverage. Again, if, if, I mean --

**Leonard:** How can you have eight miles of coverage in some areas but a mile and a half is too much in this area?

**Hultberg:** It's all based on capacity and terrain of the area. Downtown cell sites are very, very small. Downtown cell sites in major metropolitan --

**Leonard:** Because there are buildings but in this area there aren't the high rise buildings.

**Hultberg:** It's mostly capacity because there are so many people in a given area that the cell site is very small

**Leonard:** But what I heard, and obviously i'm, i'm in no position to debate the technology, but what I understood was that there is a technical way to, to create more capacity at a given tower. That's what I heard. Maybe more expensive, and it may be more difficult, I understand that, but as I read the criteria, that's, that's not a factor, if it's technologically feasible. And where technically feasible, you co-locate sites, and I guess that I am just not -- I mean, I feel like there is something that I am not hearing as to the actual reason why that site isn't being pursued on 166th and division. It's already there.

**Hultberg:** Because remember this application has two components that it needs to address. Both, both capacity and coverage

**Leonard:** I understand that, but what I am saying is and I didn't invent this, what I heard was that coverage is somewhat of a subjective criteria based on different parts of the state, and rural areas, you can have a wider coverage area because there aren't as many users but the beam will go out far enough to cover more people, but there aren't as many users so that works. But here, as I am understanding it, the conclusion that I am drawing is that there's a capacity issue and not a coverage issue, and that the -- that the capacity issue can be addressed by adding more facilities at a given site.

**Hultberg:** With all due respect, I think that --

**Leonard:** Did you hear what the man said? That's what he said.

**Hultberg:** I believe you are incorrect on both those, and the reason for the coverage area -- just because, because it can beam out miles in the rural areas doesn't mean you can do that downtown

**Leonard:** We are not talking about downtown, we are talking about out here in an area where there aren't high rise buildings.

**Hultberg:** In the subject site. The problem we face because --

**Leonard:** There are no buildings, I believe, two stories.

**Hultberg:** It has nothing to do with buildings.

**Leonard:** Educate me why that doesn't work then.

**Hultberg:** The one is interference. If we can turn up a tower, turn it up to a different level, that would be done. You can't do that in an area where there is an existing network. You can't just beam out because when you do that, you create interference from other towers in the vicinity.

**Leonard:** But as I understand it the beam, as I understood it, and tell me if I got this wrong, but what I heard was that beam can go as far as eight miles. That's what I heard. And -- did I not hear that?

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**Hultberg:** You heard but what you didn't hear is that if you did that in this location, if you even beamed it for any sort of distance, you would create interference with the other existing facilities. The network does not work that way. You can beam it when you are in the rural areas because there are no other towers near you. You can't do that when you are in an existing network

**Leonard:** You are saying every site has different power levels?

**Slotemaker:** No. The factor here, a, yes, you can --

**Leonard:** Why don't you scoot up so that I can hear you.

**\*\*\*\*\*:** You can have a coverage radius of 8 miles miles in a rural area, there is no trees, little traffic, and the tower heights are much higher

**Leonard:** But is it a function of the amount of power generated.

**\*\*\*\*\*:** All these have the same output power

**Leonard:** That is not what I heard, so part of my problem, that's not what you just said, what you just said was you would have to -- ok.

**Hultberg:** I said if could turn up the power. You can't beam it out

**Leonard:** I understand that but that's not what I was saying. Am I arguing? Maybe I shouldn't argue. I am just saying --

**Sten:** I guess for the sake of council, the council's judgment is what we do --

**Leonard:** I just wanted to technologically understand it, if, if I am making a mistake in my reasoning, I would appreciate that being pointed out, but I don't -- I hear what you said. I appreciate the position that you took.

**\*\*\*\*\*:** Your point was -- why we can't cover eight miles of the site

**Leonard:** Yes.

**\*\*\*\*\*:** At the current height of 75 feet, it's, it's -- technology does not support that

**Leonard:** How high is the tower on 164th and division?

**\*\*\*\*\*:** 164th, it's probably 120 feet, but the problem -- that gets back to his point of interference. If we put up a tower, we could put up a tower on the mountain here, you could cover 20 miles, whatever the line of sight is, like a flashlight, but you wouldn't have any capacity because everybody would be trying to use that site. You would have --

**Leonard:** I understand that.

**\*\*\*\*\*:** Everybody is seeing that signal, and you only have so many channels that people can use. So, you run into a capacity problem. And the other thing is this -- all these, all these other cell sites are on the same frequency. If you have one tower that's 100 feet high, it's going to shoot signals just like a light bulb all over town and you are going to run into interference problems with all these other --

**Leonard:** If that tower is currently that high, I am assuming that they are using it as a cell tower for that purpose now, why isn't that causing interference problems?

**\*\*\*\*\*:** It's a different company. They have a different network, different technology, and their cell locations are all different than ours

**Leonard:** If it's different technology why should there be interference?

**\*\*\*\*\*:** Why should there be --

**Leonard:** Uh-huh.

**\*\*\*\*\*:** Our technology has one frequency. All the users use a single frequency. Other cell companies have different channels, and each users use a different frequency. So they are not -- interference is limited as much as we are.

**Slotemaker:** I don't know. Maybe I can explain is generally. Qwest sites can interfere with other qwest sites, but a qwest site will not interfere with say a sprint site or an at&t or other sites, so the tower to the south, I don't know who operates from that, let's say like sprint or at&t, their site, even



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though it's taller, does not interfere with the qwest sites because they have their own frequency and network

**Leonard:** Ok. So that's where you were going.

**Slotemaker:** Our antenna is up high on that one, we could easily interfere with a bunch of qwest sites because it would be too tall for qwest's network

**Leonard:** And you can't adjust it down?

**Slotemaker:** We could go down but actually the location of that tower -- and I think all of this is in the r.f. letters, the location of the tower is so far south at the edge of the coverage area that we are trying to coverage -- trying to cover, and you want to provide the coverage from the center, not from the edge, because you are going to be in the center --

**Leonard:** Ideally, and I do appreciate that. I appreciate that ideally that's what you want to get at.

**Slotemaker:** Well, and so, well, basically if we were to locate on that, on the existing tower to the south, we are going to interfere with the existing qwest sites on the south of this existing -- south of this proposed site, and then we are going to have some capacity --

**Leonard:** If their line of sight -- this is all -- I might be beating a dead horse here.

**Francesconi:** I think you are

**Leonard:** I am better trying to understand the technology.

**Slotemaker:** I'm sorry

**Leonard:** I am wondering why you can't point it in one direction so it doesn't interfere, so that it beams in one direction and not interfere with the other sites.

**Slotemaker:** You can beam it one direction but then you will be beaming it down with respect to the coverage capacity. Every site has generally has like three sectors that broadcasts out, kind of like a mercedes. It goes out three different directions. You could probably point it in one direction but you are going to eliminate all the coverage capacity that the other two directions would have provided you.

**\*\*\*\*\*:** Let me say one final point. On this site, this particular tower, the co-location opportunity, locating there would not provide any capacity relief that we have for this main site. We want to provide capacity relief on is 37. It's just too far south.

**Slotemaker:** And I think that the city recognizes the --

**Francesconi:** Time out, Commissioner Saltzman, did you have something you wanted to do?

**Saltzman:** I was ready to make a motion.

**Francesconi:** I think we are ready. I'm ready. I don't know if commissioner Leonard is.

**Saltzman:** I was going to move to uphold the hearings officer's appeal with the condition that the neighborhood and the city forester come to some determination about the number of trees, whether it's four or ten or some other number to adequately screen the tower. I assume --

**Francesconi:** You said uphold the appeal. I am confused.

**Saltzman:** Uphold the hearings officer's decision -- deny the appeal and establish the condition that the neighborhood and the urban forestry arrive at a number of trees that is more than four. I agree that four doesn't look like it's sufficient to screen this facility but then again I am not a forester, either, and there could be reasons. That's the motion.

**Leonard:** Should we discuss or do we vote and discuss? I am used to a system --

**Francesconi:** We need a second first of all.

**Sten:** You can call for discussion whenever you want as president before or after a second. I think.

**Leonard:** Ok.

**Sten:** I will second the motion, so

**Leonard:** And I am more comfortable to discuss before we vote.

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**Francesconi:** Go ahead.

**Saltzman:** That's what we do now

**Leonard:** I will not support the motion. I mean, I think that, that we have to come to terms, you know, with the increasing reliance on technology and cell phones and I mean, it's a part of our life on the one hand, but on the other, when we have increasing density, I think that we also at the same time try -- need to just try as hard as we can to make those kinds of technologies as compatible with neighborhoods as we can, and I suppose that the dialogue that I had raised enough concerns in my mind that we had actually exhausted all of the other alternatives, for instance, tower sharing, that I am uncomfortable with supporting the motion as stated, so I will be voting no.

**Moore:** Are we taking a roll call on the motion?

**Leonard:** We are having discussion so far.

**Sten:** We have to take a roll call but you have to end discussion and call for a roll call

**Leonard:** Does anybody else have anything to say?

**Saltzman:** No.

**Moore:** On the motion, Francesconi?

**Francesconi:** I am going to support the motion. I think that the staff's analysis, unfortunately, was incorrect, and I wish that it was correct but it wasn't, and we do have to use our discretion within the context of certain rules and regulations. Aye.

**Leonard:** No.

**Saltzman:** I think there is sufficient record information in the record to justify this location of the site and that demonstrations that there are not alternatives that would not provoke the same concern anywhere in this search ring area. It's entirely residential. The issue is associated with this would be the same anywhere else. I think that qwest, the applicant, has met all of the conditions that we can impose within our purview. I think that this condition about the screening is hopefully something that can improve its visual impact. Aye.

**Sten:** Yeah. This was actually a close one for me. These are tough calls because we do need to have cell phone coverage, and it's something that I have to kind of reiterate whenever I have to vote on these because I use a cell phone and I think that we need to have cell phone coverage. That being said, I don't like putting them in residential and spend a lot of time on the project to try and make them legal on the right-of-way and it's just barely that I accept that there aren't other alternatives. To the extent that there would be any other alternative, it wouldn't solve the fundamental reason you look for an alternative, which is to get it out of a residential zone. I think that that's the issue. I think you might be possible to put it in one of the other residential parks, but I do buy the argument that that doesn't solve the problem, and I don't know that that's possible. So, I don't see another alternative. I'd like to see some language come back in the findings around commissioner Saltzman's -- there wasn't a motion to uphold. It was a motion to uphold with, and you may need to articulate this more, with some further work by the city forrester on the trees, and I am looking at the school district to just hope that maybe as you guys are looking at that, maybe you can take one more look at ways to make this a little better for the neighborhood in terms of thousand screen this thing, and so I don't see another alternative, but I am not satisfied that, that the screening criteria has been met to the maximum possibility, and I understand the lawyer's argument about having to meet some of those criteria, but I also think that the council has the right to interpret those, and I would like to see some more work in the findings on how to, how to minimize the visual plight, so for those reasons, I vote aye.

**Leonard:** The motion has been passed to deny the appeal and uphold the hearings officer's decision with modifications. We are adjourned.

**Moore:** We need findings. We need to come back come back.

**Hudson:** we need to come back

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**Moore:** We need to set a date to come back.

**Leonard:** Oh I'm sorry, come back.

**Hudson:** With revised findings, so we need to set a date.

**Sten:** Ask qwest when they can prepare the findings with frank and how long they need. How long do you need to prepare the findings?

**Slotemaker:** Two weeks I think would be appropriate.

**\*\*\*\*\*:** And then we need a week to review and a week to get it to the clerk.

**Sten:** Just helping out randy we'd look for a date 3 or 4 weeks out.

**Moore:** Three weeks was it?

**Saltzman:** Four.

**Moore:** That would be march 19<sup>th</sup>. That's a 6 p.m. session if it's an afternoon session. If you want 4 weeks.

**\*\*\*\*\*:** Another date.

**Moore:** Do you want to come back on Thursday at 2? 4 weeks on a Thursday at 2. okay that would be march 20<sup>th</sup> at 2 pm and that's a Thursday

**Leonard:** We'll reconvene march 20<sup>th</sup> 2 pm Thursday.

**Saltzman:** Will we all be here, except the mayor?

**Moore:** So far I have everybody in then.

**Leonard:** Great thank you we now are adjourned.

At 3:55 p.m., Council recessed.

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FEBRUARY 13, 2003 2:00 PM

\* \* \* [ Roll call ]

**Katz:** Let's read item 135.

**Katz:** Kathryn?

**Kathryn Beaumont, City Attorney's Office:** Before we begin the hearing I have several announcements about the scope of the hearing and the order of testimony. This is an evidentiary hearing as the notice indicated. This means you may submit new evidence to the council in support of your arguments. This evidence may be in any form, such as testimony, letters, petitions, slides, maps or drawings. Any photographs, drawings, maps or other items you show to the council during your testimony should be given to the council clerk at the end of your testimony to make sure that it becomes a part of the record. In terms of order of testimony, we'll begin with a staff report by duncan brown of the bureau of development services for approximately ten minutes, following the staff report the city council will hear from interested persons in the following order -- the appellants, which are metro and the parks bureau will go first and we'll have -- will have ten minutes to present their case. Then persons who support the appeal, each person will have three minutes to speak to the council. The principal opponent will have 15 minutes to address the city council and rebut the appellant's presentation. After the principal opponent, the council will hear from persons who oppose the appeal. If there is no principal opponent, the council can move directly to testimony from persons who oppose the appeal. Again, each person will have three minutes. Finally the appellant will have 15 minutes to rebut the presentation of the opponents of the appeal. The council may then close the hearing and deliberate. The council may take a vote today. If the vote is 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 matter before the council. Again, several guidelines for those presenting testimony and participating in the hearing today. These guidelines are established by the zoning code and state law. First, any testimony and evidence you present must be directed toward the applicable approval criteria for this review, or other criteria in the city's comprehensive plan or zoning code which you believe apply to the decision. The approval criteria will be identified as part of the staff report to the council. Before the close of the hearing, any participant may ask for an opportunity to present additional evidence. If this request is made, the council will grant a continuance or hold the record open for at least seven days to provide an opportunity to submit additional evidence and will hold the record open for an additional seven days to provide an opportunity for parties to respond to that new evidence. Under state law, after the record is closed to all parties, the applicant is entitled to ask for an additional seven days to submit final written arguments before the council makes its decision. Finally, if you fail to raise an issue supported by statements or evidence sufficient to give the -- sufficient to give the council and parties an opportunity you to respond to the issue, you will be precluded from appealing to the land use board of appeals. That concludes what I have to say.

**Katz:** Thank you. Let me put something in the record that I need to say before we start. The item we're going to hear this afternoon has been before us a couple of times. Each discussion has ended up focusing heavily on the temporary parking lot at the zoo facility. That issue will not be before us today. I just want to make it clear because even though the case before us will no longer include the parking lot, it is my understanding that the city will shortly want to address that issue in another form and will be -- we'll be seeing it again. So for those of you who plan to testify, please note that council will not consider testimony concerning the temporary parking lot element of the zoo's conditional use master plan. Council will not receive testimony or evidence regarding the

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temporary parking lot because it's not before us today, it may be before us in another form. Ok? Go ahead.

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

**Beaumont:** Do you want to ask about exparte contact?

**Katz:** Yes, i'm sorry. Exparte contacts on this issue? Conflict of interests? Anybody --

**Francesconi:** Even though parks is apparently an appellant, i've not even talked to parks about this. I haven't talked to anybody on my staff.

**Katz:** All right. Conflicts of interest, I don't hear anybody. Does anybody want to question our silence on either one or both of these issues? Hearing none, I think we've completed that. We'll have a staff report for ten minutes, and then the appellants for ten, supporters of the appellants three, principal opponents and so forth. You know the so forth.

**Duncan Brown, Bureau of Development Services:** Duncan brown, b.d.s. You have before you the conditional use master plan for the Oregon zoo, which is on remand from luba. The proposal is for conditional use master plan for the Oregon zoo. It includes numerous improvements that are listed here, and adjustment to reduce the required parking spaces and an adjustment to -- or couple of adjustments to parking lot improvements in the employee parking lot. I would like to note here that the adjustment to reduce the minimum required parking spaces was from 1286 to 1109. This 1109 spaces does include the temporary parking lot, so we would like to amend the adjustment to reflect the reduction of an additional 125 spaces to a total of 984 spaces that would be required for the zoo. The history of the conditional use master plan and this particular parking lot started back in about 1993, when the city approved an amendment to an already existing conditional use master plan to include a 129-space temporary parking lot for construction workers that were working on the light rail system at that time. In 1997, the city approved a conditional use master plan which included a proposal to convert the temporary parking space to 125-space permanent parking lot. This approval at the hearings officer's level was appealed to the city council by metro and the parks bureau. The city council then approved the master plan with some modification, and it went into effect. Long after the 21-day appeal period to luba about a year and a half later, the master plan was appealed to luba, luba dismissed the appeal as untimely, but then it was appealed to the court of appeals, who reversed the decision. Because although the public notice description contained a large number of items which you had just seen a couple of slides previously, it did not include reference to the conversion of the temporary parking lot to a permanent parking lot. Therefore it was remanded back to the city. In 2001, city council readopted the master plan and it was again appealed to luba and remanded. All of these assignments of error related to the conversion of the temporary parking lot to a permanent parking lot. Generally luba concluded that the city didn't fully justify a need for the additional parking lot. The purpose of this hearing is simply to readopt the conditional use master plan, but modify the site boundary to exclude the temporary parking lot. The approval criteria are listed here. I'd like to point out that according to city code that land use applications and any revisions will under most circumstances and in this case be processed based on the regulations in effect when the original complete application was received. I have a copy of the code that was in effect at that time. The text of the code provision, 33700.080 is contained at the end of the power point handout, and the applicable parts of the code are underlined for you. The site's located in -- on the west side of Portland, along canyon road. Shown here by the star. This is an aerial photo of the area showing the zoning pattern. The plan boundaries. And the temporary parking lot that would be removed from the plan boundaries. This is a copy of the Oregon zoo master plan, showing the zoo, surrounding land uses such as the world forestry center, the children's museum, canyon road to the immediate south, where access is gained between the

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zoo and the children's museum. Also a major access point is from fairview boulevard to the north, and to the main parking lot, which contains about 840 parking spaces. And light rail station. And then the temporary parking lot that would be removed from the master plan. This is a picture of the zooming entry point taken from the light rail station. Main gates of the zoo. The parking lot. This was shown I believe it was a tuesday. It was a weekday, early afternoon, just about a week ago. And then the temporary parking lot that would be removed. In summary, the conditional use master plan has been adopted by the city twice, remanded twice. Reasons for the remand relate to the conversion of the temporary parking lot to a permanent parking lot, and by removing that temporary parking lot from the master plan, the reasons for the remand will also be removed. We recommend the master plan boundaries be amended to remove the temporary parking lot, and that you readopt the conditional use master plan for the Oregon zoo, which includes the conditional use master plan adjustments to reduce a number of parking spaces, in this case it should be 984 parking spaces instead of 1109 to reflect the reduction of 125 spaces that would be removed because of the temporary parking lot, and also approval of environmental review for the proposed projects. So that's it.

**Katz:** Questions? This shouldn't take very long. Is anybody here from the appellants?

**Steve Pfeiffer, Representing the Zoo:** Good afternoon, mayor Katz. Steve pfeifer, address 1211 southwest fifth, 97204. I agree with you, mayor this, should be wrapped up fairly quickly. To try and bring it to the simplest --

**Katz:** When a lawyer tells me this, I really begin to worry. I believe you.

**Pfeiffer:** I've watched this case many years from a distance, and watched it become more convoluted every time I turn around. That ended about a year ago when the zoo asked them to revisit the temporary parking lot with a different look, to see what could do to move that issue along, and frankly probably behind all of us and you. Secondly and more at least I see more easily, is to amend the master plan of the Oregon zoo, and as caught up in that temporary parking lot series of appeals, because it was all adopted as part much one ordinance. Because the zoo did then a year ago and still wants to come forward, and we will in the next few months now, within an amendment to monday identify some of the -- modify some of the exhibits and various aspects of the zoo. It seemed pretty easy on the surface to separate those two. Until I discovered very quickly that in the second remand, which came back to you on halloween of 2001, which was the second luba remand on the zoo, when that decision which came back, which had been approved earlier by about nine months, you had as mayor Katz points out, a lot of focused attention on the temporary parking lot and made a second effort to approve it. It came back again on halloween. The problem was when that ordinance was adopted, it didn't include a second-time-around adoption of the master plan. The first ordinance the master plan in the parking lot, the second ordinance just had the parking lot. That was all rolling along and we were going to address that as part of the amendment package until about two months ago, we had a series of building permits, still have a series of building permits pending for expansion for what used to be the cascade exhibit, now it's the eagle salmon exhibit, which is an exhibit of Oregon native habitat and wildlife that goes up the canyon where cascades was. Your staff appropriately pointed out that it would be difficult to approve that permit even though it for a use that was approved in '97, because that '97 plan has never been readopted. And that's simply why we're here today. That's why we've asked initially one, now two changes to that '97 decision. One is to delete the temporary parking lot from this, and ask that you instead adopt the '97 plan as approved by council this last time, probably in about '99. Granting metro's appeal for an adjustment on the temporary -- on the parking lot for the employees. And there was a second appeal by parks that was granted by you in that form, again,

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with two modifications, as you know. Delete the parking lot, temporary lot, 125 spaces, and now as of today, ask that you reduce that adjustment for the minimum parking standards down to the number duncan mentioned, to make sure everything is consistent internally. With that, that gives us the ability to move forward with three things, at least two immediately. Proceed with the finalization for the building permit for the exhibit that was part of that earlier approved plan, secondly, submit to you an amendment to the master plan, again, without the temporary parking lot at least as currently drafting, to address other aspects of the zoo master plan, and then third, and i'll close with this, as mayor Katz pointed out at the outset, within some window by some process and initiated by any number of potential parties, including metro, a resolution I think we all hope in some form or another of the temporary parking lot. There are at least two ways i'm aware of, one could be a new application for the conditional use approval, or secondly for the third time, you could pick it up on remand, I guess for the second time, pick it up on remand because it is still sitting for you in some status as a result of that october 2001 remand for you to pick up again, even without a new application, and that's just a matter of strategy and policy, I suppose. Suffice it to say, either way will lead to another hearing focused solely on the parking lot. With that i'd certainly ask anymore questions. Susan is here on behalf of parks, and only if I guess susan felt compelled to add something would she need to come forward, and of course tony is here from the zoo.

**Katz:** Questions? Anybody else want to testify? Just one second, you're on the other side.

\*\*\*\*\*: No, i'm not.

**Katz:** Oh, ok. Is there another side? There shouldn't be another side on this. All right. So we'll open it up to testimony.

**Jeff Boly:** I'm jeff boly, i'm here as an interested person, also here as a supporter of the zoo. But as well an advocate for open space and mass transit. I just want to make -- first I want to support what mr. Pfeifer has said about the importance of getting the temporary parking lot issue out of the way so that the zoo can go forward and do the other things, which it wants to do and i'm fully supportive of that. The only thing I wanted to make clear, and I have prepared a letter which i'd like to put into the record that addresses this issue, just so that -- and it's got all the citations and all that stuff, but the bottom line is that as to the temporary parking lot, we do have a use that has continued for 16 months after the remand, which I believe and this pretty well establishes why, is a continuing illegal use, and I just want to make sure that it's clear that what we -- that this is what we have ongoing, and that I believe that the consequence of that should be that there shouldn't be any more parking up there, period, starting now forward until there is a conditional use hearing. And I also believe that because of the provisions of the zoning code, that now that the zoo -- the temporary lot is out of the master plan, that means it will not be able to be used by the zoo, period. And as to the other two entities up there, they're not going to be able to use it until they -- they shouldn't be able to use it until it goes through a conditional use process, and that as the record stand right now, and this is what I think luba has said pretty clearly, that the whole basis for our case was that there wasn't a need. And so if there's not a need, and that's the current state of the record, it's pretty hard to justify ongoing use in the interim until this is resolved. So here's my letter, and do I just --

**Katz:** Why don't you submit it into the record, but i'll need a counsel from katherine on this in terms of the use from now on after we act on this.

**Beaumont:** That's something i'd be happy to discuss with you. I'm not sure that it's necessary or appropriate to discuss it here.

**Katz:** Ok. Just wanted -- just want to make sure for the record. Anybody else want to testify?

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**Katz:** Come on up.

**Peter Williamson, 1930 SW Highland Rd., 97221:** I'm not sure whose side I was on. My name is Pete, I addressed this a couple years ago in the same meeting. I'm the closest resident to that lot.

I wasn't going to say anything because I wasn't sure about what you were going to discuss today, because I thought you were going to discuss strictly about the thing, but what Mr. Boly was talking about about stopping the use of the lot in the interim, I would say that personally for me to directly affect my life, because the lot, you know, there's noise, traffic, when I moved in it was there, I've learned to live with it, probably would be better off in the short-term, but I don't think it's feasible because the lot isn't controlled. The lot isn't -- the zoo does patrol it, but not at night. Keeping -- the lot isn't just used by people who go to the zoo or the children's museum, the lot is used by people who come and use the trail, people who come and walk their dogs, people to just come simply because there's an open green space there and they can play frisbee. So I feel if that's to be considered, that the city council should take into effect that it's not just people going there specifically to use the zoo, that there are other people who use that space, and that to try and close it off, it might be a good thing to say yeah, we can do that, but I don't think it's going to happen. I think you'd have to put out resources that there isn't money for out there to affect it, so I think at this time I don't think it would be an effective choice.

**Katz:** Thank you. Thank you. But our counsel said basically, and Jeff just entered this into the record, didn't plea to us on this, and our counsel just said this is not an issue to be dealt with right now. All right. Nobody else wants to say rebuttal of anything? Steve? No? Ok. You wanted us to do a temporary decision -- tentative decision?

**Beaumont:** I think your decision today should be tentative.

**Katz:** I need a motion from somebody here.

**Saltzman:** I move to adopt the '97 plan.

**Katz:** And eliminate the -- what? Are you helping me? Eliminate the temporary parking lot and reduce the number of spaces to 984.

**Beaumont:** Correct. And I guess to be really technical, to grant Metro's appeal and grant the park bureau's appeal on the adjustments.

**Francesconi:** Second.

**Katz:** Roll call. Tentative decision.

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

**Katz:** Mayor votes aye. [ gavel pounded ] thank you, everybody. Yes, and when we gonna come back --

**Beaumont:** I think we concluded that one week was sufficient.

**Moore:** They're holding that for a work session. Judy has asked to hold next Thursday for a work session.

**Katz:** If Judy asked to hold it for a work session, then she probably -- we need it.

**Beaumont:** Is Wednesday available, Karla?

**Moore:** That's 6:00 p.m. Next week.

**Beaumont:** Oh, that's right.

**Moore:** You could put yourself on it.

**Katz:** Oh, no. No, no, no. We've got Wednesday evening, we've got a long hearing.

**Beaumont:** Why don't we go to the following Wednesday or Thursday.

**Moore:** Following Thursday is North Edison, but Commissioner Saltzman is gone that Thursday the 27th. The Wednesday before is the leaf blowers.



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**Katz:** Maybe we could take it next wednesday -- it's a quick -- it will just be a quick vote. Ok. Let's put it on for the first thing on wednesday.

**Moore:** The 19th at 6:00 p.m.?

**Katz:** Yeah.

**Moore:** Ok.

**Katz:** We stand adjourned. [ gavel pounded ]

At 2:32 p.m., Council adjourned.