



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **9TH DAY OF APRIL, 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.

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

<b>TIME CERTAIN</b>	<b>Disposition:</b>
<p><b>307 TIME CERTAIN: 9:30 AM</b> – Clarify and improve readability without changing policy or intent of the original land use regulations and allow the Planning Director to make clear and objective corrections to maps (Ordinance introduced by Commissioner Leonard; amend Titles 1 and 33)</p> <p><b>Motion to exempt stormwater management on site improvements from the threshold calculation for nonconforming development and include stormwater improvements to manage stormwater on site as one of the options a developer can undertake once they do exceed the threshold:</b> Moved by Commissioner Saltzman and seconded by Commissioner Francesconi and gavelled down by Mayor Katz after no objections.</p>	<p><b>PASSED TO            SECOND READING            AS AMENDED            APRIL 16, 2003            AT 9:30 AM</b></p>
<p><b>308</b> Clarify and improve readability without changing policy or intent of the original hazardous substance regulations (Ordinance introduced by Commissioner Leonard; amend Title 33)</p>	<p><b>PASSED TO            SECOND READING            APRIL 16, 2003            AT 9:30 AM</b></p>
<p><b>CONSENT AGENDA – NO DISCUSSION</b></p> <p><b>Mayor Vera Katz</b></p>	
<p><b>309</b> Approve appointment of Chris Lassen to the Housing Authority of Portland Board of Commissioners to replace Mike Czajka for a term to expire December 10, 2003 (Resolution)</p> <p>(Y-5)</p>	<p><b>36132</b></p>
<p><b>*310</b> Create a new Nonrepresented classification of Vehicle Services Operations Supervisor and establish a compensation rate for this classification (Ordinance)</p> <p>(Y-5)</p>	<p><b>177369</b></p>

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<p><b>*311</b> Amend the Intergovernmental Agreement with Port of Portland for installation of new dispatch consoles at the Port (Ordinance; amend Contract No. 51035)  (Y-5)</p>	<p align="center"><b>177370</b></p>
<p><b>*312</b> Extend agreement with Cable, Huston, Haagensen &amp; Lloyd for outside legal counsel (Ordinance; amend Contract No. 33228)  (Y-5)</p>	<p align="center"><b>177371</b></p>
<p><b>*313</b> Authorize a Historic Preservation Fund grant application for \$25,000 to supplement the City Historic Resources Program for the federal FY October 1, 2003-August 31, 2004 (Ordinance)  (Y-5)</p>	<p align="center"><b>177372</b></p>
<p><b>*314</b> Extend agreement with Tri-County Metropolitan Transportation District of Oregon and City of Gresham to provide three officers for the TriMet Transit Police managed by the Portland Police Bureau (Ordinance; amend Contract No. 51486)  (Y-5)</p>	<p align="center"><b>177373</b></p>
<p><b>*315</b> Authorize agreement with Tri-County Metropolitan Transportation District of Oregon and Washington County to provide deputies for the TriMet Transit Police managed by the Portland Police Bureau (Ordinance)  (Y-5)</p>	<p align="center"><b>177374</b></p>
<p align="center"><b>Commissioner Jim Francesconi</b></p>	
<p><b>*316</b> Issue a Water Line Permit to the Boring Water District #24 to operate and maintain a municipal water line crossing the Springwater Corridor at the northern terminus of School Avenue (Ordinance)  (Y-5)</p>	<p align="center"><b>177375</b></p>
<p><b>*317</b> Authorize the continuance of negotiations for the purchase of right-of-way and temporary construction easements for the SE Johnson Creek Blvd. project and authorize the State of Oregon to commence condemnation proceedings, if necessary and obtain early possession (Ordinance)  (Y-5)</p>	<p align="center"><b>177376</b></p>
<p><b>*318</b> Authorize agreement with Oregon Judicial Department on behalf of the Fourth Judicial District to transfer \$150,000 to the Office of Transportation, Bureau of Transportation System Management to contribute to purchase of a handheld electronic parking citation system (Ordinance)  (Y-5)</p>	<p align="center"><b>177377</b></p>
<p><b>*319</b> Amend contract with Kittelson and Associates, Inc. to provide engineering services for Phase II of the TEA-21 Bus Signal Priority Project (Ordinance; amend Contract No. 33038)  (Y-5)</p>	<p align="center"><b>177378</b></p>
<p><b>320</b> Grant a revocable permit to Portland Saturday Market, Inc. to use Ankeny Park and that portion of Gov. Tom McCall Waterfront Park located under the Burnside Bridge (Second Reading Agenda 292)  (Y-5)</p>	<p align="center"><b>177379</b></p>

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**Commissioner Randy Leonard**

**\*321** Authorize a temporary event entertainment by the Cirque du Soleil  
(Ordinance; waive Title 33)  
(Y-5)

**177380**

**Commissioner Dan Saltzman**

**\*322** Accept a \$20,000 grant from the State of Oregon Department of Environmental  
Quality for a computer recycling expansion project at FREE GEEK  
(Ordinance)  
(Y-5)

**177381**

**\*323** Accept a \$20,000 grant from the Department of Environmental Quality for a  
recycling project at Portland State University (Ordinance)  
(Y-5)

**177382**

**324** Authorize an Intergovernmental Agreement with Metro for \$7,500 to help fund  
the development of a new traveling theatre show on waste prevention and  
recycling for secondary school aged students (Ordinance)

**PASSED TO  
SECOND READING  
APRIL 16, 2003  
AT 9:30 AM**

**\*325** Authorize agreement with Spencer B. Gross, Inc. in the amount of \$52,255 to  
produce historical airphoto maps of the Willamette Watershed Planning  
area (Ordinance)  
(Y-5)

**177383**

**\*326** Authorize contract with CH2M Hill for on-call services, not to exceed  
\$1,000,000 per year for Technical Assistance on the Portland Harbor  
Superfund Site (Ordinance)  
(Y-5)

**177384**

**327** Amend Intergovernmental Agreement with the City of Gresham for the  
Portland Water Bureau to supply water to certain City of Gresham  
customers (Second Reading Agenda 297; amend Contract No. 26438)  
(Y-5)

**177385**

**Commissioner Erik Sten**

**\*328** Authorize agreement with Human Solutions, Inc. for \$33,089 to provide  
services as a Community Housing Development Organization under the  
HOME program guidelines and provide for payment (Ordinance)  
(Y-5)

**177386**

**\*329** Authorize new Consortium agreement with the City of Gresham and  
Multnomah County for participating in the U.S. Department of Housing  
and Urban Development HOME Investment Partnership Program  
(Ordinance)  
(Y-5)

**177387**

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**REGULAR AGENDA**

**Mayor Vera Katz**

**\*330** Amend contract with Grandma's Place to extend contract and increase compensation (Ordinance; amend Contract No. 32091)  
(Y-5)

**177388**

**\*331** Authorize application to Metro Regional Parks and Greenspaces Program and U.S. Fish and Wildlife Service for a \$40,000 grant for costs associated with the creek daylighting of the Headwaters at Tryon Creek housing and restoration project (Previous Agenda 275)  
(Y-5)

**177389**

At 10:33 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **9TH DAY OF APRIL, 2003** AT 2:00 P.M.

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

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>332</b>    <b>TIME CERTAIN: 2:00 PM</b> – Appeal of Forest Park Neighborhood Association against Hearings Officer’s decision to approve the application of Meridian Ridge LLC for a Zoning Map Amendment and a Preliminary Plan for a 21-lot Planned Unit Development Subdivision with private streets at 258 NW Skyline Boulevard and 311 NW Royal Boulevard (Hearing; LUR 99-00293 ZC SU PU VZ TR AD)</p> <p><b>Motion to accept the Hearings Officer’s decision with conditions that the applicant use the May through October construction season and use building materials sensitive to the scenic overlay and the environment:</b>                      Moved by Commissioner Leonard and seconded by Commissioner    Saltzman.</p> <p>(Y-4; N-1 Sten)</p>	<p><b>Disposition:</b></p> <p><b>TENTATIVELY UPHOLD HEARING OFFICER’S DECISION WITH CONDITIONS; PREPARE FINDINGS FOR APRIL 30, 2003 AT 2:00 PM</b></p>
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At 3:52 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.

**April 9, 2003**  
**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.

**APRIL 9, 2003**                      **9:30 am**

[ roll call ]

**Katz:** Let's take consent agenda. Any items to be removed off the consent agenda? Hearing none, anybody want to remove any items? No? Roll call on consent agenda.

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

**Katz:** Mayor votes aye. [ gavel pounded ] all right. Item 307, 308.

**Items 307 and 308.**

**Katz:** And we have some amendments. Are you aware of the amendments that commissioner Saltzman has brought forward?

**Douglas Hardy, Bureau of Development Services:** I received the amendments this morning, so I am aware of those.

**Katz:** You are aware of it. All right. We're not going to vote on it today. It's not an emergency, so we'll hear it and we'll adopt them if the council wants to and then we'll vote on it next week. All right. Go ahead.

**Hardy:** Thank you, Douglas Hardy with the bureau of development services. What we are considering today is the code maintenance 2003 packet. Code maintenance 2003 consists of approximately 55 amendments to title 33, the Portland zoning code, and one amendment to title 1. These amendments seek to clarify and simplify implementation of the Portland zoning code. And for the record, the Portland zoning code, I have a copy here, so any efforts we can do to simplify that are supported. Secondly, what code maintenance is not intended to do is create new land use policies. Any amendment that's included in this packet is required to be consistent with the original intent of the regulation that's in question. And lastly, the list of amendments that are being considered in this packet were adopted by city council last fall as part of the regulatory improvement work plan. As you well know, the work plan is intended to address land use and building standards that are in conflict, are overly complex, duplicative, or produce unintended results. And code maintenance packet is one of three amendment packets that make up the regular code improvement list. In terms of how it's included in the packet were selected, basically the amendments respond to issues that were raised by the public development review staff and other service bureaus. Last fall the list was reviewed and modified by more than 120 stakeholders who participated in a series of focus groups sponsored by mayor Vera Katz as part of the regulatory improvement work plan. The focus groups consisted of neighborhood advocates, land use consultants, developers, small business owners, as well as city staff from the service bureaus. The amendments that were selected were required to further the goals of the regulatory improvement work plan. Other factors that were used to consider the amendments that ultimately got into the packet included that the amendment was required to improve the clarity of the code while again still being consistent with the intent of the standard, and that the amendment request addresses ongoing problems with administering the code on a regular basis, and finally, that the amendment would have to be consistent with the city's comprehensive plan. In terms of the types of amendments that are included in the code maintenance packet, there are basically three category, broad categories. First are what we've termed technical. These are basically the no-brainers. They correct typographical or graphical errors, and ensure that the zoning code is consistent with other city codes. The second category would be what we term clarification, and it's sort of self-explanatory, it

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clarifies existing text that facilitate the daily use of the code. And the third category are what we've loosely called minor policy amendments. These address ongoing problems with administering the code. We've included them in the packet as they require immediate attention due to their importance, or the frequency that they arise. What I'd like to do today is basically focus on some of the -- our highlights of the more significant amendments in the packet, and these are basically fall into three categories. The first category are those that we've termed development standards. These include reduced setbacks for existing development on site of land divisions, secondly, exterior materials in the mississippi avenue conservation district, and thirdly, the landscape requirements for houses, attached houses, duplexes, in the multidwelling and commercial zones. The second category of amendments that I just wanted to quickly go over are -- involve existing land use reviews in the code. These include the central city parking review, five-year renewal for surface parking lots, land division of existing mobile home parks, excavation and fill review, and hazardous substance review. And then the third category of amendments that I want to highlight involves procedures, and that one I would highlight is the zoning map correction. For the development standard related amendments, the proposal is in the r7, r5 and r2.5 single dwelling zone is to allow the minimum setback to be reduced from five feet to three feet for existing development on the site of proposed land divisions. The purpose for the amendment is that currently it's often difficult to meet the minimum site setback requirement in combination with a lot of the new land division requirements, primarily those land division requirements related to what is required to be an attract, things like tree preservation program, storm water management, and once you put in that track, often it makes it difficult for an existing house to meet the side setback between the house and the tract. The currently request to reduce the setback, they're fairly frequently approved through the land use review process. However, under the new land division process, these reviews often will result in the land division being processed as a type 2x instead of a type 1, and going to the type 2x results in an increased fee, increased review time, and a preapplication conference requirement. The second amendment I wanted to highlight related to development standards, relates to the exterior building material requirement in the mississippi avenue conservation district. And what the amendment specifically does is to eliminate the requirement that street-facing facades be in red brick or a combination of red brick and block. This amendment was first brought to us by the mississippi historic conservation target area, as well as by the boise neighborhood association. Basically the problem with the existing language in the code is that this type of material, red brick in fact is not consistent with the historic character of this corridor along mississippi. The more predominant in fact building material is horizontal wood siding, and in fact fewer than 10% of the buildings existing buildings are in red brick. And because of that, basically the standard creates rather than preserves a historic character along the area. Despite this, if an applicant did want to use a material other than red brick, would it force them to go through a discretionary land use review as opposed to meeting design standards. And even with the proposed amendments, the character of the district would continue to be protected by the remaining community design standards related to the types of materials you can and cannot use on street-facing facades. The third development standard related criteria I wanted to highlight is the minimum required landscaping for houses, attached house and duplexes in multidwelling and commercial zones. And what the proposed amendment does is to exempt these housing types from the minimum required standards, landscape standards of the multidwelling and commercial zones. And again, the purpose for doing this is the minimum landscape standards of the multidwelling commercial zones were in fact intended for multidwelling and commercial development, and when you try to apply these landscape standards to houses or row houses, the standard, it just doesn't work well and results literally in trees being two to three feet apart in order to meet that standard. Even with the amendment, houses, attached house and duplexes would still be held to the minimum landscape standard that applies to comparable development and single dwelling zones. That would be the t1 standard that was

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recently adopted several years ago that either requires an applicant to preserve trees or plant the minimum number of trees on the site. In the land use review category of amendments, the first that I wanted to highlight is the central city parking review five-year renewal for surface parking lots, it's also commonly referred to as a ccpr review. The proposal is to eliminate that requirement, again, for the five-year renewal requirement for existing surface parking lots. The approval -- if you look at the approval criteria for central city parking review, they are limited to demonstrating that the existing parking lot continues to meet development standards, and that any previous conditions of approval are continued to be met, and I wanted to emphasize this renewal is for existing parking, surface parking lots. Not for new parking lots. In reviewing the 1995 commentary associated with this particular standard, it was clear that the five-year renewal was viewed primarily as an enforcement tool. However, conformance with development standards and previous conditions of approval are code compliance issues that are dealt with on a regular basis through b.d.s.'s code compliance staff, and these certain -- and ensuring that an applicant conforms with these really doesn't merit a type iii land use review. The -- for this particular land use review, it goes -- it's 120-day review, approximately \$6800 for something again that can be equally done using our existing code compliance tools. The second amendment in the land use review category is to basically identify a process approval criteria and submittal requirements for the land division of mobile exist -- existing mobile home parks. This particular amendment is necessary in order to bring the Portland zoning code into conformance with state law that was passed I believe in 2001. The state law basically requires that cities and counties allow a land -- allow the land division of existing mobile home parks without meeting the typical land division requirement that's we would apply to other land divisions, including things like lot size and density. The purpose -- basic purpose behind the stay law was to create a mechanism for owners of mobile homes in these existing parks to own the lot that their mobile home is located on. And therefore to facilitate the purpose the state law requires the locality to provide a land division process that doesn't cause an undue economic burden on the applicant or the owner of the park. And furthermore, that the process does not impose unreasonable constraints on the applicant when seeking to convert these parks. And so basically, the proposed amendment and the approval criteria reflect those state law requirements. They are approval criteria limited to demonstrating that the park is in compliance with the development standards for mobile home parks or as a nonconforming use, that the land division will not increase the number of mobile home spaces within the park, nor will the proposal bring the park further out of conformance with any development standards that are currently in the zoning code. Another amendment in the land use review category is the proposal to eliminate the type ii excavation and fill review from the zoning code. The approval criteria for this particular review are limited to demonstrating that off-site safety hazards are mitigated, that the hours of operation are limited in order to reduce impacts on the surrounding neighborhood, and that off-site dust and dirt are kept to a minimum. And these factors that are looked at as part of the excavation and fill review are in fact already assessed and reviewed through other existing city titles, and so therefore the excavation and fill review is duplicative of other city titles. These titles primarily include title 10 that deal with erosion and sediment control. This particular title did not exist when the excavation and fill review was first established in 1991. Title 18 regulates noise, and title 24, the building regulations, look at -- require the applicant to demonstrate the strength and stability of soils in order to support any proposed development and to ensure that finished slopes are safe for intended uses. B.d.s.'s site development team that implement primarily title 10 and title 24 have expressed support for this particular amendment. It's also important to note that regulations of these titles are implemented by staff with former expertise than land use planners in assessing the technical of -- technical impacts related to excavation and fill activities. The next proposed amendment in the land use review category relates to the hazardous substance review, and again, the proposal is to eliminate the type ii hazardous substance review from the Portland zoning code.



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The fire bureau's hazardous substance inspector testified at the planning commission in support of these amendments to the zoning code. They find that basically the hazardous substance review in the zoning code is not only duplicative of regulations enforced by the Portland fire bureau, primarily the uniform fire code, but more importantly, that the fire bureau regulation of hazardous substance goes far beyond what is ever considered by land use planners in doing these reviews. As I -- as I indicated, the uniform fire code regulates to a greater extent the quantity, storage, handling, and emergency response requirements related to hazardous substances so that in fact these materials don't demonstrate a threat to the public safety. And again, importantly, the regulations of the uniform fire code related to hazardous substances are implemented by professional staff with precise expertise in the area of hazardous substances. The amendments -- proposed amendments that involve deleting references to hazardous substances also include deleting some references to hazardous substances in the columbia south shore and cascade station plan districts. Before the amendments can, however, be deleted from -- the references can be deleted from title 33, the amendment that's are currently being proposed by the water bureau to title 21, the water code, would have to be in effect, and the amendments that are being proposed and in the process being proposed by water bureau are specifically intended to protect the quality of the aquifer within the columbia south shore area. The title 21 amendments that -- being proposed by the water bureau are expected to be in effect on july 1, 2003. And in order to prevent sort of a lapse or a gap in regulations, specifically in columbia south shore area, we have as you've seen in your packet, we've proposed two separate ordinances. The second ordinance would affect a separate effective date -- set a second date that would tie in with those amendments to title 21.

**Leonard:** Can I ask a question on this point? Does this at all get to some of the concerns that have existed in quite the past few years with regard to contaminants in the soil in some of the industrial sites in columbia south shore? I'm thinking specifically the old i.c.n. site that had been identified as being contaminate and having leaching occurring into the water.

**Hardy:** That's a good question. The question may be, does -- do the title 21 amendments being proposed by the water bureau --

**Leonard:** I thought you mentioned title 33.

**Hardy:** What we're proposing is in fact to remove the reference to hazardous substance from title 33.

**Leonard:** That's my question. Do we somehow permit some activity there on previously identified contaminated lands?

**Hardy:** Right. Currently they're -- even under the existing regulations in title 33 there's nothing that regulates that particular aspect of a site that's previously been contaminated. What the regulations currently in title 33 regulate, if -- I don't know, a new tenant comes into a building or proposes a new building, and they will be using hazardous substances, then that triggers our hazardous substance review through title 33. Unfortunately, at least through the zoning code, there's nothing that looks at whether the site was previously contaminated and how does that affect the development that may occur on that site. I don't know whether title 21 goes further than title 33 currently goes in terms of looking at that aspect. I believe there's a representative from the water bureau.

**Leonard:** In any event, the issue of that contamination didn't motivate these amendments?

**Hardy:** No.

**Leonard:** Ok.

**Katz:** Did you want to add anything, rosemary?

**Rosemary Menard, Water Bureau:** I'm rosemary menard with the water bureau. The current contamination sites that we're all aware of are being dealt with through a remediation process that combines working with the department of environmental quality and the responsible party and the city is actively engaged in those things. A great example that we all have is the boeing cascade

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record of decision and remediation plan that's in place. And we've obviously been working with the issues in i.c.n. And some of the sites closer to 205. What the proposed groundwater protection program will do is actually work on prevention of additional contamination.

**Leonard:** Ok. Thanks.

**Katz:** Ok. Keep going.

**Hardy:** Ok. The last amendment that I wanted to highlight this, in the so-called procedure category that relates to correcting the zoning map, what the amendment allows is that the planning director to make technical nondiscretionary corrections to maps in title 33 through an administrative process subject to the approval of the city attorney. This particular allowance is proposed to be located in title 1, and will follow an existing paragraph in that title that currently allows the city auditor to make minor administrative corrections to the city codes. We felt this was a good fit in title 1. The proposed amendment to title 1 will specify the three limited circumstances when the planning director would have the authority to make these administrative corrections. And to clarify, these circumstances where we need to correct the zoning map are, again, basically typographical or graphical, in this case graphical errors on the zoning map. It may have been in circumstances where an approved zone map amendment went through a land use review process but was inadvertently admitted -- omitted when it got to the point of updating the zoning map, or it may be based on a graphical error when a line was placed incorrectly on the zoning map. Those mistakes more frequently happen when we literally used to do the maps by hand. Currently they're done electronically. The second part of the amendment clarifies that those -- the map correction that's would continue to be processed through a type 2 -- type ii land use process, and these would involve limited discretion. Basically the purpose for this amendment is the existing type 1 review that's required for processing map corrections that unequivocally reflect a previously adopted map, but clearly is a graphical error. It seems excessive and is really a poor use of limited staff resources. And the -- again, the amended code would identify the three errors that would be processed through a land use review and through the planning commission process it was determined that the degree of discretion required to process these types of map errors would merit a type ii land use review. By going to type ii would we -- we would still be doing the public notice requirement, and opportunity for local appeal for those items. And then lastly, mayor Katz had indicated we had received this morning an amendment from commissioner Saltzman related to one of the elements in the code maintenance packet related to nonconforming upgrades and clarifying what types of development is exempt from basically triggering that nonconforming upgrade. The amendment that we currently have in the packet is basically just clarifying what is currently in the code. In the early 1990's, we -- a line was put in the code that basically said mandatory improvements for fire, life, safety, and accessibility requirements would be exempt from triggering this nonconforming upgrade. And the reason at least for that amendment in the early 1990's was that it was -- it was felt that to require -- somebody could do the nonconforming upgrades because they were trying to bring a building closer into conformance with safety requirements. The applicant shouldn't be penalized for those because it directly addressed the public safety. The amendment that was proposed that we received this morning is basically to expand that list of things that would be exempt from the nonconforming upgrades to include, let's see, required or voluntary improvements made to enhance on-site storm water management in conformance with the storm water management manual. I guess from my perspective, that goes a little beyond, in fact it does go beyond the code maintenance packet in that it is -- it sets new policy and it's opening the door to a list of other possible appropriate things that should be exempt from nonconforming upgrades. We at least through the code maintenance process to date haven't sort of made that available to people, and i'm certain if you open that door there would be a host of other interests that would say, it's important also to include other things that would be exempt from that nonconforming upgrade list. As you know, the bureau of planning also is involved in the completing the so-called top 10 list from the regulatory reform packet. And I

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understand in discussions with bureau planning that in the policy packet, that they are looking at a variety of -- going beyond tweaks, to the nonconforming upgrades, would look at possibly exempting other items from that list as well as looking at the menu option. From my perspective, I think it may be possibly more appropriate to delay that particular amendment and have it considered in a -- basically the broader public setting that the policy packet 2 would allow, again, that bureau of plan assisting currently involved in.

**Katz:** I'm going to let commissioner Saltzman -- i'm going to let you talk about it, but the concern that I have is that this hasn't -- nobody knows about it.

**Hardy:** Right. And I think through the code maintenance process there was some misunderstanding from some members of the public and even some of the other service bureaus in terms of what we were doing through this particular amendment in code maintenance versus what was being done through the top 10 amendments in bureau planning.

**Katz:** All right.

**Hardy:** What we had previously said to those people is, that's really policy, that's -- that it may be merited and warranted to include that as an exemption, but it's not something we can do through the --

**Katz:** So your critique on this is, this may not be the place to do it, that it has merit, but it may be long in another -- may belong in another process.

**Hardy:** Right.

**Katz:** I think there was some misunderstanding with my brief conversation with commissioner Saltzman, and i'm going to let him address that.

**Saltzman:** I'm like to start out by asking the council members to consider if these amendments do have merit, we should just do it. We seem -- they seem to be caught up in a catch-22 process. We did prepare to offer these during the regulatory reform discussion we had about nonconforming development. We were directed by planning staff to wait until the code maintenance process to offer these amendments. So we're here today offering these amendment and we're being once again directed to wait for some of the process. I'll describe the amendments and urge you to approve them. I think they are meritorious on there face. What they do is they provide incentives to development to manage storm water on site. That's an important goal for our c.s.o. programs. We want to get as much storm water controlled on the property rather than putting it in pipes, having it end up in the river. So the amendments as douglas explained, the first one exempts storm water management on site, improvements from the threshold calculation for nonconforming development. The second part of the amendment would include storm water improvements to manage storm water on site as one of the options a developer can undertake once they do exceed the threshold, there's a list of improvements that need to be made. This adds storm water on-site storm water management to those list of improvements that can be made. The third amendment is simply to say that when landscape improvements are being made, that the landscaping improvements that effectively manage storm water on site be looked at as storm water management, as landscaping options. Right now developer is referred to the portion of our planning code that deals with landscaping, but it doesn't connect the landscaping with the all too obvious and often overlooked need to use landscaping to manage storm water on site. It simply puts a reference in our storm water manual saying look at this section also and think about using your landscape to manage your stormwater on site. There relatively I think noncontroversial amendments, I think they speak on the merits of themselves. They're voluntary incentives to manage storm water on site. It's an important public policy goal of the city. Sure, we can wait and kick this out to process, but we may never see this again. And it will die a thousand deaths of, you know, we didn't let everybody else in on the list, or all the other reasons we've often find not to do something around here. I'd say if the five of us think there's merit in this approach, rather than us trying to knock on the door and find the right place to bring this up, let's just do it right now, and I would urge that we adopt these amendments.

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**Katz:** Let's have further discussion on it. Carrie, did you want to come up and say something?

**Cary Pinard, Planning Bureau:** Carrie pinard, planning bureau. I think there's been a misunderstanding here, and this -- these are complicated ways we're trying to move regulatory improvement packages sort of simultaneously, and it's easy to get them mixed up. Our staff has never recommended b.e.s. take these kinds of amendments to the code maintenance package. We did say they were always on the list for policy package 2. You guys will be hearing policy package 1 in a month or so after it gets out of the planning commission. And then policy package 2 will be coming after that, and we've already identified other similar issues here that may be great ideas of how to update, have the right incentives for how to get storm water improvements, other nonconforming improvements, but do that in a balanced and appropriate way. This amendment hasn't had any public airing about whether --

**Katz:** It will have one next week. Let me just ask you, if the council wanted to adopt this, it would still -- and you still want to deal with this issue in policy two package, correct? You would bring it forward at that time.

**Pinard:** The council could adopt it now and direct us to continue to look at this new amendment in concert with the other issues that already have been identified for policy package two.

**Katz:** That's my point. If commissioner Saltzman can't wait, we can do it now and then you bring it back, and so you have a full public airing about, are there any other issues with regard to this.

**Pinard:** And if you do that, I would recommend that you be clear how much you want to open the door in the code maintenance process for issues that involve some policy. Because that's something that b.d.s. is constantly struggling with.

**Katz:** I know. And i'm just trying to -- so the council is going to have to make a decision on it, and if the council wants to make a decision on it, then I want to see -- and the answer is yes, we'll do it now, then I want to see this issue brought back in the policy section with the opportunity for other people to testify on whether they would like to be included in this policy.

**Pinard:** And you can certainly direct us to do that.

**Katz:** So that's the policy question for the council to deal with. Ok. Let me -- folks have heard this, we'll take this amendment in a minute. Let's open it up to further testimony.

**Marty Sucec:** Marty sucec, Portland, Oregon. I want to commend commissioner Saltzman. I've had the same experience with bringing up issues when -- in the process and then having them wait. I think this sounds like good amendment for connecting up things that we need to help with our watershed management and storm water management. So I like it. Go for it.

**Katz:** Process makes no difference to you, marty.

\*\*\*\*\*: [inaudible]

**Katz:** We understand that. I'm trying to get to some sort of a compromise to satisfy folks, but then deal with this issue in a public venue so that people would know about it. All right.

**Sucec:** I understand.

**Katz:** Right. Anybody else want to testify on this issue?

**Moore:** I only had two people who signed up.

**Katz:** Then we'll get to the amendment. Ok. Who signed up?

**Moore:** Winkler?

\*\*\*\*\*: That's another ordinance.

**Moore:** We took them both at the same time.

**Katz:** This is 307 and 308.

**Saltzman:** She's here for the metro green spaces. Regular agenda.

\*\*\*\*\*: Oh, I signed the wrong sheet.

**Katz:** Ok, fine. Jim, did you sign the wrong sheet too?

\*\*\*\*\*: [inaudible]

**Katz:** All right. I'll take the motion for the amendment. Does the council want to discuss it first?

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**Sten:** I think you came up with a brilliant compromise, mayor, i'm all for it.

**Francesconi:** I'm not sure what it is, but i'm for it.

**Saltzman:** We adopt it today and then allow it to be addressed as policy packet two comes forward. We have the ability to exercise judgment here too.

**Sten:** I move --

**Katz:** I -- you always have the ability to exercise judgment. And you always --

**Saltzman:** Sometimes it feels like we're always beholden to everything that come to us, and you sign off on it or not. This is an opportunity to establish the priority for the policy packet 2 developments and know this --

**Katz:** This is code maintenance. But that's all right. That's why i'm trying to find a way out of this. So what we'll do is, if the council is all right, we'll accept the amendments with the understanding that this amendment, with everything else that you wanted to address in the policy document on this subject matter, then comes back to us and we'll have another opportunity to have the public testify on this.

**Francesconi:** I'll second that.

**Katz:** Any objections? Hearing none, well -- [gavel pounded] so ordered. All right. Fine. We'll move on those to -- let me tell commissioner leonard what we did. All right. Let's move to regular agenda. This is good work. It's not sexy, but it's very important. We did the compromise while you were gone.

**Leonard:** I didn't want to compromise.

**Katz:** Oh, well, everybody else seemed to. All right. 330.

**Item 330.**

**Katz:** Anybody want to testify on this?

\*\*\*\*\*: [inaudible]

**Katz:** Ok. Passes on to second. Oh, i'm sorry, it is an emergency. Roll call.

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

**Katz:** Mayor votes aye. [ gavel pounded ] 331.

**Item 331.**

**Katz:** Remember, this came back to us and we asked them to come back in the following week on it. Who's here to talk to us about it?

**Ross Cornelius, Portland Development Commission:** Thank you, mayor. My name is ross cornelius. I'm with Portland development commission. Two weeks ago I requested the council continue this ordinance until today at the request of a couple of individuals who were needing some more time to talk with us about the project. It a very exciting project. We've pursued the grant in question with metro, which is a green spaces grant. Which involves the habitat conservation restoration and enhancement projects that have been identified in a watershed plan, stream assessment or other similar document or plan or where the need for the project is otherwise demonstrated within a landscape context. These are some of the criteria on the grant. Also, projects that conserve as models or experimental trials for both proven and new innovative conservation, restoration and/or enhancement techniques-to-designed to benefit fish and wildlife. The third criteria is other types of projects specifically designed to benefit fish and wildlife and their habitats. The headwaters at tryon creek project has gone through a number of evolutions, and through the vision of a number of folks, including the developer, we have arrived at a programming of the site that includes the restoration and daylighting of a creek, the he'd waters of tryon. And we're pursuing this grant in order to help with that restoration and establishment of the project. We have had -- used the time to spend some time with folks who had some concerns about the project, about what exactly we're hoping to accomplish here and all the public benefit that is occurring. And we have issues that have come up with the project. It's in southwest Portland, and it includes affordable housing development for seniors in the southwest, which is something that we've really

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been interested in getting accomplished. It includes work force housing development with the city lights bond project, and ownership housing as well as some really exciting storm water treatment and off-site work that's going on around the project, and as a result of the project. So -- but this time i'm here to ask for approval to apply for the grant.

**Katz:** Ok. Questions? All right. Let's take testimony. I know marty is here. Marty and jim, come up together. I know this will be interesting.

**Marty Sucec, Multnomah Neighborhood Association:** Marty sucec, acting chair of the Multnomah neighborhood association. My address is on record.

**Katz:** That's all right.

**Sucec:** I feel first that I want to correct the record from last time. I said that john warner of p.d.c. had assured us that p.d.c. wouldn't proceed if the neighborhood opposed it. I read the minutes carefully, and he said that it was unlikely that p.d.c. would pursue it. He was excellent, he was really good, he listened to the neighborhood, he understood us, he tried to involve us, and I don't want my interpretation to be on his record.

**Katz:** We appreciate that.

**Sucec:** The other thing is I really regret that I blind sided ross. The way he put to it me was, it would be a first reading last time and a second reading today, and i've been involved in those first and second readings, so I misunderstood that it was a continuation. So having been blind sided many times, I wanted to apologize to him for that. He was excellent. His work on this is excellent and I think he should be commended. He, like me, is caught in a very conflicted situation that is a result of a lot of bad judgment. There was -- the neighborhood has a standing record, a vote that it doesn't want density beyond 90 units there. We know that property is mr. Winkler's, but there are other issues as well for us. That's the vote that remains. We have issues with this project. I'd like to say that there was -- there were a lot of process mistakes here. I didn't want to lead you into another one there. The crucial one to me is that -- with b.e.s. and b.o.p., and certainly everybody involved has a right to do that. There should have been a neighborhood person there. There was a group of four people that really supported development like this on this project. They were the supporters, they've been so disaffected, they didn't even come last night. When we were going to talk about the daylighting of the creek. So this should have had one of us. This idea of daylighting the creek was originally frank's, an architect, who would have been a good representative. That would be good involvement. This wasn't anywhere along the line. I want to tell you one other thing before I tell you what the neighborhood's position is. Michael foote, who I told you about, a sustainable develop every -- developer, who wanted to put 39 units on an acreage about this size, has asked the neighborhood, he could do that and more without -- just saying we're going to do this. He's called to ask if he could appear to ask for a variance on requirements there. And he asked for a reduction to the minimum density of 33 units. I thought that would never happen. That's, you know, not that -- we want a god balance. -- a good balance. That makes me feel better, because i'm getting a little disenchanted, and i'm losing my hope that all the planning work we did -- I have three minutes as a private citizen too.

**Katz:** No, no.

**Sucec:** Anyway, i'm losing hope. And we have --

**Katz:** Marty, hold it. I'm going to ask the council to give you another minute.

**Sucec:** Ok. Well, i'm hoping that we can revisit issues with the development. What I would like to say is the neighborhood does not oppose this amendment. On this amendment to apply for the grant.

**Katz:** So before we turn to jim, what would the -- be very clear to us what the neighborhood would -- what the neighborhood would want in terms --

**Sucec:** In the apartment complex, about 90 units, and I think if we did this right and got involved, we could go a little more than that.

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**Katz:** So you want to be included in the process?

**Sucec:** Yeah, we do. And just not have somebody come and say, this is what we want to do, what do you think? If you don't like this you're going to get a call center there, or a storage thing. That's not citizen involvement.

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

**Jim Winkler, Winkler Development Corp.:** I'm jim winkler, 210 southwest morrison. I thought it might be helpful to put a little different perspective on this project. About four years ago, our company bought the site. It was called an environmentally degraded site. It's the former site of the eagles lodge on southwest 30th. Just north of the famous aladdin motel. The site is zoned cg, commercial general. It has a 3-1 f.a.r. And it's roughly the size of a little more than three downtown blocks. With its 3-1 f.a.r., its outright entitlement is for 300, a little under 375,000 square feet or an apartment terms, roughly 500 units. That's the density to which it is currently zoned. We had explored earlier a row house concept that was banned 'do -- abandoned about three years ago and started working with p.d.c. on the city lights program. There was -- the idea to daylight the creek was first approached, it was broached by a planner from the planning bureau and by b.e.s. We immediately connected to the idea, because we saw it as an opportunity to demonstrate that development could catalize environmental restoration. I saw it, I hate the expression, I saw it as a real paradigm shift in the way we approach development in Portland. I've been extremely gratified, and you don't hear this too often, by the extraordinary cooperation from b.e.s., from o.s.d., from planning, parks, transportation, and p.d.c. and mike reid at the e.s.a. program.

**Katz:** Can you repeat that again?

**Winkler:** I've been extremely gratified.

**Katz:** That's all right.

**Winkler:** I mean that sincerely. The cooperation of people committed to doing something that is an important prototype, an achievement that speaks to the green aspirations of the developers, city, the neighborhood is important. The creek idea was to provide a green backbone around which a sustainable urban infill project is done. And it is high density, but it's only high density that's slightly above one-third of its outright zoned entitlement. It's mixed income. It's mixed generation. It's truly an extraordinary achievement, and I think an important prototype for the type of green development we want to see become identified with the Portland brand. The objective was to balance the needs of smart growth in the environment, and because creeks don't pay rent, we need some grants to pay for them.

**Katz:** Questions?

**Leonard:** Just so i'm clear, the issue for the neighborhoods then, you don't feel like you've been involved in the decision?

**Sucec:** We have some specific issues with the development. We wouldn't be having those issues if we'd been approached differently, given the considerable success we've had with the city and the bureaus in the plan, the southwest community plan. We feel sometimes, you know, that the planners don't get it. Marie johnson suggested that they get the neighborhood involved in this. We knew where she was coming from, but perhaps mr. Winkler didn't. She got involved. We were in there. And you know, we do have a segment that really wants to try to limit density in some respects. But if we had been involved with the bureaus who know us, some of our better planners, not me, if we had been truly involved as partners, I felt confident that by the committee work we'd done and the presentation they'd done, that we could find a way to support even higher density. Somebody is always watching, and you know what that feels like. But we had a clear consensus that we wanted development on -- along barbur that brought this kind of development with seniors, with --

**Leonard:** This is consistent --

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**Sucec:** You can't -- the neighborhood has gotten polarized because of how they feel outmaneuvered.

**Leonard:** What I'm saying is, if this is consistent with the neighborhood plan, it's actually the proposed development is less than what's allowed --

**Sucec:** I know that.

**Leonard:** We're trying to figure out what the neighborhood would --

**Katz:** Can we start the courtship all over again?

**Sucec:** I'd like to. I would be willing to give it a shot. I've been --

**Katz:** You've been married a couple of times.

**Sucec:** Not like you. [laughter] I missed commissioner Hales --

**Katz:** Forget what I just said. Would you like to start the courtship again?

**Sucec:** Yes.

**Katz:** Are you willing to participate in the courtship?

**Winkler:** I think that we'll all start fresh. I think everybody is trying to participate in good faith. The real issues here is all about density. There's some process issues, but I think it's really about --

**Sucec:** I beg to differ. That's the topic, the subtext is much different.

**Leonard:** Just so I'm clear, we're not asking to amend.

**Sucec:** No, you're just asking for a grant.

**Leonard:** You don't have to have a special consideration to build what you want to build.

**Winkler:** That's correct. There is a land use action to subdivide the property that has a single adjustment, which is because it is a commercial general, there's an L3 landscape screening so you can't see the Costco or the Safeway, and that's the only thing we've asked to --

**Leonard:** This is the building kitty corner from the fire station?

**Winkler:** It is.

**Leonard:** It's a contaminated billing as I recall.

**Winkler:** It's got its fair share of asbestos.

**Leonard:** And it's an eyesore. What you're doing is putting a creek there and --

**Winkler:** And hopefully a considerable amount of housing.

**Sucec:** There is a creek in a culvert, and there was a wetlands.

**Katz:** Jim, let -- I know both of you, and you probably all started on the wrong foot. I'm not going to point fingers. Can we start this conversation again? Because the community really has gone through an extensive planning effort that hasn't been easy for everybody, including them. And we've completed it, and it's done. Yes, you're right, there are elements in the community that will raise the density issue, but there are elements in the community that clearly understand that they want development to occur. So I think we can come -- we can accept this, authorize to get this grant, and then work together. The final decision I guess, does this come back to us or not? Not if it's within --

**Winkler:** I think this is just a request to authorize --

**Katz:** No, no. I'm talking about the housing project.

\*\*\*\*\*: I don't think so, but it might, depending on what happens.

\*\*\*\*\*: We will be working --

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

**Ross Cornelius, Portland Development Commission:** Ross Cornelius, p.d.c. We have committed to come back to the neighborhood association in June and at that point we should have all of the numbers available and the fees -- the feasibility study, and we'll be able to continue the dialogue about the project. At the same time, we will be working to put forward amendments, not amendments, but commission action from p.d.c. to authorize the city lights.

**Katz:** So it doesn't come back.



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**Cornelius:** So I think they will recommend to you the issue answer of the city lights bonds as well as a lot of other development agreement issues. No this would be the first one. Which was put together to create innovative projects.

**Katz:** I would know. Commissioner Sten and I both worked on it.

**Cornelius:** That's correct. And it is a very exciting project. So we hope to work closely with the neighborhood association. There's some exciting improvements that can happen in the area. We want to do our best to respond to issues that they have. If I could too, we will be -- p.d.c.'s role will be managing the development agreement, the master development agreement, so we need to make sure all the parts are coming together.

**Katz:** All right. Whether it comes back to us or not, I think everybody's ready to buckle down and make this -- this is a first project of this kind, and we want to make it successful for everybody. Ok.

**Sucec:** We need another celebration. Nice to see you all again.

**Katz:** Thank you, everybody. Oh, is there anybody else who wants to testify?

\*\*\*\*\*: [inaudible]

**Katz:** That was on the consent agenda. Sit still. We voted on that already on the -- are you aware of the consent agenda notion? No. Ok. If you leave your material back there rather than bringing it forward to us, we may suspend the rules and after we take this vote and allow you just to talk to us, since you've come here not knowing about the consent agenda. I hate to turn people away. All right. Roll call.

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

**Katz:** Mayor votes aye. [ gavel pounded ] all right. Why don't you come on up. Thank you. So you know, this passed already.

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

**Katz:** Give it to karla so she can give it to the council.

**Katz:** You have three minutes. Identify yourself.

**Zephyr Moore:** Is that -- i'm from northeast Portland. The vehicle service operation supervisor with little effort will make a major impact on the health of the local planet while stretching the city's budget. Although responsible for the city vehicles, the -- that officer would -- could educate the public about traveling in the most economical manner. And i've listed here seven items not in priority. The most important thing that the vehicle operations person would do would be, put -- require that -- put studded tires on extra wheels and use them only on the days that snow or on the -- are on the road. The last time we had snow was january 27, 2002. They've driven studded tires, many city vehicles, all this year, for five months. That's on this page. Just educating the public about -- that is the flat pages that I have, ones with the kinked corner. That's the 1-7 items. But this -- the flat pages talks specifically about studded tires. The operations, a supervisor should teach people to drive with properly inflated tires, they should -- item 2, remove useless weight from public vehicles, and you've probably seen we with my license plate, those things weigh a pound. And a pound -- the amount of fuel that it takes to push a pound for -- burning a gallon of fuel, the amount of distance that is 35 feet per gallon just to push the advertising. That's a pound. And so take the advertising off all city vehicles, urge everyone else to take it off their vehicles, because what goes up is noxious gas, you add rain, it comes down as dinosaur soup. So we're talking about pollution in the water today, well, if you got noxious gas floating around it's all going to come to the water eventually. And when I say take weight out of the cars, i'm also including cigarette lighters, ashtrays, stuff like that. Stuff -- you don't need them. How many people smoke? And if they do smoke, they can figure out where to light their cigarettes with. Replace your spare tire, which weighs like 20 or 30 pounds, most of the city vehicles, probably just get around the city. And if they had a flat, it would be pretty easy to fix it. They could do -- if they have just a can of fix-a-flat, that's like two pounds, so you take 20 pounds off your vehicle. Instantly. Train the vehicle

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operators to move with the least effort. When a vehicle comes up to a stop sign on -- like the one-way downtown grid, and the light turns green, and they turn off that direction onto another one-way, the next light will be red because it's set for cross traffic, not -- anyway. It's listed here.

**Katz:** I'm just curious, what do you do on your regular hours?

**Z. Moore:** I'm an amzoil distributor, synthetic lubricant, which seems weird to me as the salmon man, promoting synthetic lubricants. What I found with my car when I switched to synthetic lube, it ran so much better. It used so much less fuel. [laughter]

**Katz:** Ok: The commercial is over.

**Z. Moore:** I mean, the city -- the city should consider using it.

**Katz:** I'll tell you what i'm going to do. Every one of us has vehicles within our bureaus, but the bureau of general services manages them, and with the exception of one bureau. So I will bring up these issues to ron bergman.

**Z. Moore:** Ok.

**Katz:** Thank you for bringing them up.

**Z. Moore:** Peace.

**Katz:** Fine, everybody. We stand adjourned --

**Moore:** Wwsd --

**Katz:** What's that?

**Z. Moore:** What would salmon do.

**Katz:** That's going to be a topic for one of the talk shows.

**Z. Moore:** I would hope so.

**Katz:** We stand adjourned until 2.

At 10:33 a.m., Council recessed.

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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.

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**2:00 PM**

[ roll call ]

**Katz:** Item 332.

**Item 332.**

**Kathryn Beaumont, Sr. Deputy Attorney:** Good afternoon. Before we begin the hearing, I have several announcements to make concerning the nature of the hearing, the order of testimony, and some guidelines for presenting testimony today. First, this is an on the record hearing. This means that you have to limit your testimony to material and issues in the record. During this hearing, you can only talk about the issues, testimony, exhibits, and other evidence presented before the hearings officer. You cannot bring up anything new. This hearing is designed only to decide if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. In terms of the order of testimony, we'll begin with a staff report by erik engstrom of the bureau of development services for 10 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 10 minutes to present the appellant's case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. The applicant will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, the council will hear from persons who oppose the appeal, and again, each person will be limited to three minutes. Finally, the appellant will have five minutes to rebut the presentation of the applicant. And other opponents of the appeal. The council may then close the hearing and deliberate. If the council takes a tentative vote today, 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, this is an on the record hearing. You must limit your remarks based on the record compiled by the hearings officer. In presenting your argument it's permissible to refer to evidence that was previously submitted to the hearings officer. It is not permissible to submit new evidence today that was not submitted to the hearings officer. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the city council's final decision. If you believe a person who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that's not in the record, you may object to that argument. Finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to city council. If you believe another persons has raised issues today that were not raised before the hearings officer, you may object to the council's consideration of those issues. The council will provide a time at the end of the hearing for anyone to offer an objection. That concludes the instructions.

**Katz:** Declaration of conflicts of interest by the council members? Declaration of ex parte contacts by council members? Does anybody in the audience want to challenge the silence of the council on those two issues? If not, we'll proceed.

**Eric Engstrom, Bureau of Development Services:** Good afternoon, mayor, commissioners. For the record, my name is eric engstrom, i'm a planner with the bureau of development services, and i've been assigned to this case. I also wanted to note as I start here that i've got a couple other

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bureau representatives with me in the room should there be questions. Bob haley from the office of transportation is here, kelly hyde from the bureau of environmental services, and then I have george helm and mike hayakawa from the site development section of b.d.s.

**Katz:** Before you start, kathryn mentioned, we -- she will flag to me, either she will interrupt testimony as we start with the testimony, or she will flag at the end of the testimony those issues that are new issues brought to the council. And I will ask the council that those issues not influence the council's result on this particular issue, or their vote, or their consideration. Ok.

**Engstrom:** The purpose of today's hearing is to consider an appeal of the hearings officer decision to approve with conditions a zoning map amount and a 21-lot planned unit development subdivision. There are also current variation and adjustments proposed. The appellant is the forest park neighborhood association, the applicant is meridian ridge llc. The choices before council today are to uphold the hearings officer's decision uphold that decision with modifications or overturn the decision. Just a summary of the requests before you. The first and primary request is a zone change from farm forest residential to low-density single-dwelling residential and that's in conformance with the comprehensive plan. Second item on the list, is a 21-lot subdivision, including private streets, open space, and storm water management tracts. The plan unit development aspect of this is to allow lots between 2300 and more than 30,000 square feet. Six of the lots would be for attached homes, 15 for detached homes. The variances under title 34 requested related to street configuration, turnaround configuration and sidewalk location, and many of those are related to the fact the site is steeply sloped in a standard street configuration would be difficult here. The applicant initially requested a tree removal review, and that's relevant to the first 100 feet from nw skyline. They've since withdrawn that request so they'll be held to the standards in place for the scenic overlay rather than asking for an exception through tree removal review. They've also asked for title 33 adjustments to front yard paving and building coverage. With those adjustments, the standards in question are expressed as a percentage of the lot size, and it's not the applicant is requesting large building or paved areas, it's that the lots are small. So it's as a percentage of these lots, these items are larger than they normally would be. The relevant approval criteria identified by staff are in three categories. The first is a subdivision is reviewed under title 34, at least it was at the time that this application came in. Those criteria include improvement guarantee, principles of acceptability, design standards, solar access requirements, improvements, code relevant to pud's and then the criteria for variances and modifications. Under title 33, the zoning code, the relevant criteria include those related to the zoning map amendment request, the plan unit development request, the tree removal review, and the adjustment review. Three other policies were relevant in this case as well. Because this is a zoning map amendment, the transportation element of the comprehensive plan was identified, and then because this is a subdivision proposed under the old title 34, the transportation planning rule was applicable. Finally, the northwest hills study was found to be applicable, and this is an ordinance that relates to an area along skyline boulevard that -- and these requirements have since been wrapped up into the zoning code, but at the time this application was made they existed as a separate ordinance. The existing zoning on the site is residential farm forest with a scenic overlay, and again, the scenic overlay is the strip of land within 100 feet of skyline. That would be to the left side of the site. The proposed zoning is r10, which is a low-density single-density residential zone. The scenic overlay would remain the same. This slide is a general overview picture of the proposed plat, and it shows the 21 lots with the open space tracts and private street tracts. I've highlighted in this slide, it shows a little more detail, the building footprint, but i've also highlighted in green the proposed open space areas. Those would be shared open space. And then I also want to point out on this slide that at the north side of the site in the center, the lots 16-21 are for the attached housing lots. Those would be the smallest lots there. This has a slightly different orientation, so what was on the top is now on the side, but this is a topographic map of the site showing grading, and the main thing I want to

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point out here is that the site is steeply sloped, the closer those lines are together on this kind of map, the steeper it is. So you can see the flattest part of the site is in the bench that's on the top of this slide, corresponding to where the proposed street would be and the proposed attached housing. Staff originally recommended approval subject to conditions. The hearings officer also recommended approval generally agreeing with the staff recommendation, and once again, the decision was to approve a zoning map amendment, a 21-lot p.u.d. Subdivision, variances related to the private street layout and zoning code adjustments related to building coverage and paving standards. The appellant has raised a number of concerns, and I'll briefly go through those, and then I'll get to more detail as I go. The most significant policy issue is -- relates to what code this proposal should be reviewed against. I'll get into details with that in a moment. The second concern identified was that the r10 zone is being applied to this site and the neighborhood expressed concerns about whether that would be the most appropriate zoning designation here. Third, land suitability, and specifically landslide hazard. Sewer pump station capacity was identified as a concern. The subdivision will be served by a pump station that's about two blocks down the hill from this site, and so sewage flows to that, and then it's pumped back up into the city sewage system. That's a public system. Traffic impacts were identified. Tree removal concerns were identified. The appellants raise a concern about the number of variances and adjustments being requested and the cumulative impact of all those exceptions. And then raised the question about how we calculated density relative to the net site area. As I mentioned, the primary issue is the -- which code is applicable. And I'll run through some time line issues. The application was first filed in April 15, 1999. The specific plans before you today have changed since that initial application, primarily in response to city-identified concerns with the proposal. The application was initially considered complete in 1999, but changes were made after it was deemed complete, and again, to make the case more approvable was the main reason those changes were made. The new land division code was adopted in July 1 of 2002, and after that additional changes to the application were made. The appellant believes as a result of that, that the recently adopted 2002 land division code should be the applicable code here. Staff and the hearings officer found that the case should be reviewed against the code in effect when the initial application was submitted. And the hearings officer made findings to that effect on page 5 of their decision. I don't know if all of you have a copy of that. But there is a paragraph there discussing the relevant state law and the hearings officer's findings. The second issue identified was the appropriateness of the r10 designation. Briefly the comprehensive plan designation for this site is r10. The r10 zoning map designation is the zoning map designation that corresponds to that comprehensive plan designation, and I should mention that there are two maps here we're talking about. The comprehensive plan map and the zoning code map. And they're usually in sync with one another, but there are sites such as this one where there's a zoning designation and then there's a future designation designated on the comp plan. The appellant believes the r10 zoning designation is not the appropriate designation for the site. The staff and the hearings officer disagreed and felt that the r10 was the only zone that may be considered in this case, given that was the comprehensive plan designation for the site. The site is known to have potential for landslides, and it was identified even under the old code as having that hazard. As a result, the city agencies required a number of geo technical evaluation was this application, and because the application drag order for a while, the applicant periodically updated those evaluations as site conditions changed. Briefly, those evaluations concluded that the site can be developed safely with proper engineering, despite the identified land hazard. Staff technical staff agreed with the reports provided by the applicant, and conditions of approval were placed on the site with this decision to require additional design specific analysis at the time of development. So when they come in for their specific engineered designs, they'll have to show that that will have to be accompanied by a geotechnical report. The appellant cites code section 33.632.020 and asking for more in-depth study. That's the land hazard chapter in the new code that was adopted

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after 2002. So this issue relates to the last issue I mentioned. Briefly under the new land division code there's a slightly more elaborate requirement for a land hazard study on a site of a land division. And the distinction between what was done here and what would be done under the new code is that the old code mainly talked about the suitability of the site and whether it would be safe to develop. It didn't ask for a comparative study of which parts of the site were the safest. The new code would ask you to look at different parts of the site if there are any parts that are particularly safer or less safe. Staff and hearings officer as I mentioned don't believe that 33.632 is applicable in this case because it was adopted after this application was submitted. Other issues, the pump station. The applicant will be required to connect to the royal hanlon pump station. The appellant questions the extent of those improvements and some specifics about that. Again, bes is here to answer questions about that. The applicant provided a traffic report to address the NW hills plan. One of the requirements in that plan concerns traffic capacity because Skyline is limited and because of topography and site conditions it would be difficult to vastly expand the capacity of skyline blvd. So there is a bit of additional analysis required of subdivisions in that area. The appellant has identified concerns about vehicle impacts including traffic parking and draining impacts. Other concerns as I mentioned are about tree review and tree removal. About the number of variances requested. In response to those, I think the applicant has proposed a planned unit development which creates a reasonable context for the number of exceptions they're requesting. The appellant also has another issue that disagrees with the hearings officer's interpretation of how we calculated density essentially. That's a rather technical question if you do have questions about that I'd be happy to go into more detail, but I'll skip that for now. This is looking along Skyline Blvd. near the western site frontage. This is the existing house which would be on lot 1. There is one house that would remain on the site. This is the existing driveway to that house and also the point where one of the new private streets would meet skyline blvd. and the yellow tape shows roughly the route of that street. This is taken from skyline blvd. There is a small pole in a little farther up the hill from the existing house which is roughly where the lots 5&6 would obtain their access through an access easement. That's just looking the other direction from that same slide. The thing to note here is that lots 5&6 particularly and generally the lots along skyline are steeply sloped and they drop off pretty quickly. This works both for and against the application. One, obviously the land hazard issue, but it also creates an opportunity to bring the houses along that frontage down below the elevation of skyline to insure that they don't block the views from skyline, which is what the applicant has done with their private streets. They have created frontage roads which allow the houses to be down lower than skyline. This is an existing home in the area of lots 13-21. This is probably the flattest portion of the site. This house would be demolished. That's just looking slightly different direction up towards the top of the site. I think I'm looking at – Part of that slide would be the open space tract in the nw corner of the site and to the left would be sites 5&6 at the top. This I've just turned around and am looking down towards the city at this point. The house in front of you would be an adjacent property—not part of this application. This would be roughly from lot 13-15. That's a driveway in the same area, again looking up at tract E and lots 5&6. This is just a generic picture of the interior of the site. As you can see it's fairly wooded. This was taken in the winter without the leaves, but as you can see most of the trees would loose their leaves during the winter. That was one factor in looking at the scenic impacts here. Again the alternatives facing Council would be to deny the appeal and therefore uphold the hearings officer's decision, deny the appeal and make modifications to the hearings officer's decision or uphold the appeal and overturn the hearing officer's decision. That concludes my initial presentation. I'd be happy to answer any questions.

**Katz:** Questions? All right, I'm sure if you have questions come up we can have them come back up later on. The appellant—you have 10 minutes and you know the supporters of the appellant have 3.

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**Scott Rosenlund, Forest Park NA Development Chair:** Good afternoon Mayor Katz, Commissioners, I am Scott Rosenlund, 5900 NW Cornell Rd. in Portland. I'm here representing the neighborhood association. We have some base arguments that are legal and then I have some concerns of the neighbors I'm going to cover tonight. Starting with our base arguments we want to discuss the hearing officer's decision. On page 70 it goes into a section that discusses attorney Paul Norr's comments to the hearing officer regarding the fees that are due on this site. At the bottom of the paragraph, the hearing officer pointed out that Norr may be correct on pointing out that the City made an error in failing to correctly bill the applicant for the difference between the 16 lots initially proposed and the 21 lots now being recommended. On page 79 it contains the conditions approved by the hearing officer. Condition #8 is that we pay these fees. It is our understanding that fees are due at the time of application. If more fees were due at a later date, then the application was not complete at that time then until that later date. Like I said, the fees were due in 1999 that they paid were for a 16 lot pud. It's now a 21 lot pud, so more fees are due to complete the application. The pud cannot be approved, therefore the zoning cannot be approved per the NW Hills Plan. We consider significant changes from the original application to be further evidence that this isn't the same application that was originally proposed. It went from the 16 lot to 21 lots, which we consider a significant change. When you look into the City Code it talks about changes to an approved plan development 33.665.500.B it says, an increase in density including the number of housing units. That's considered a major change and it goes back to review. Also adding acres to the pud size. This is a significant change. It was also done to this project since the original application according to the same 33.665.500A. It says increase to site area of more than 5%. More than 5% was added to this pud request. Shifting of density cluster, a significant change, 33.665.500 H. Changes within 50 feet of the perimeter of the pud where the perimeter abuts residential zone. They have shifted their duplex style housing right up next to the property lines to the north which are zoned R1 residential. Shifting house also to the open space to avoid development in a slide zone-- we believe it also falls under the same Code section F, which is deleting or changing the purpose for flood hazard or landslide hazard assessments and for easements. We feel there is a cumulative effect of all the numerous variances and adjustments. We consider them also significant changes to the original application, as well as the requirement for the fire department appeal to get a variance there, which wasn't completed until November of 2002. That's the date we're still saying is at least the date the application was complete. Let alone that they still owe fees which are due at the time of completion of the application. We don't think the applicant has made an honest effort to complete the application in a timely manner. In response to 33.262.010 describes open space as important on this lot. On page 18 allows for greater preservation of land in a natural state. We're concerned that perhaps lot 1 should be cut down in size and have more property from the 30,000 sq ft which is much larger than the 10,000 sq ft if they do go down to 10,000 sq ft. Many of the lots which are sub-size of that, 6,000 sq ft. So we believe that there should be better preservation of natural state land because they are going to do a large amount of regarding for the swale there which will impact the natural ability of the land to recuperate. Zone change is not an automatic thing we feel. Does this conform with the neighborhood R-10? We do not believe it does. The adjoining neighborhood is R20 which is about the densest type of development in Forest Park neighborhood association. And does the pud conform to the neighborhood? It's always been our position that these type of developments are not appropriate for Forest Park Neighborhood Association. Who knows what is best for the neighborhood—the City or the neighborhood? We feel that the neighborhood knows what's best for our neighborhood in this case. What's appropriate? You know, is McDonald's drive-through appropriate on Hawthorne? It can legally be permitted, but is it appropriate? It was not found appropriate. It seems to be a city-wide problem because there's other areas in the city where the neighborhoods voice their complaints and concerns and they seem to be overlooked. Now I want to

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go into some of our environmental arguments and our concerns of our neighborhood. Site analysis still applies that was done on this site for the Balch Creek protection plan, even though this site at the time in 1999 was not in the Balch Creek protection plan. It is now, since 2001. When you open up and talk about the site analysis for this project they talk about in the conclusions even, the forested areas along the north side of site 82, which this pud is part of site 82, are of highest significance. Developed areas are not of significant except for remaining forest along Skyline Blvd. which has a high scenic corridor significance. We are concerned about the loss of scenic qualities of Skyline blvd. Deer and other large mammals use the large open spaces around the transmitters across from skyline blvd. from the site and I often see them crossing in the summertime onto the site. Discussion of impact of R20 to wildlife habitat are also discussed in this plan and the corridor and how R10 will be far more detrimental to the site and to the habitat of wildlife in the wildlife corridor. Again, who knows best what's for the neighborhood? We've been fighting for wildlife protections and wildlife corridors. There seems to be a regional plan to protect the wildlife corridor for the park and healthy ecosystem there. We don't fee that this type of development is appropriate. A healthy wildlife corridor keeps the parks and the city ecologically attached. Fragmenting and isolating of ecosystem leads to slow demise of its health and eventual collapse. Genetic isolation will lead to extinction. Baby steps to environmental law is the path the city continues to follow in it's development policies for Forest Park Neighborhood. Forest Heights and Chickadee Point are prime examples of that. Now we have Meridian Ridge. As I said, the Balch Creek Plan does not apply to this area, but in the 2001 code change it does clearly incorporate this site into the Balch Creek Protection Plan. One of our conditions of approval actually, that we requested from the hearings officer, was that at least the minimum request that we could make was that it falls under the Balch Creek Protection summertime construction ordinances. Even in the geotech report by the applicant's staff, they said that they recommended only construction during the dry months. We don't get any of those protections here in this case. And that was the ground disturbing ordinance No. 33.575.100A. Even with planters and detention areas, increased flows from the site will impact the sub basins of Balch creek with increase flows causing stream bank erosion and failure impacting ---in the neighborhood. Other neighborhoods are going to be speaking today with concerns about the slide zones, the history of slides, water pressures, transportation issues which are extremely important. Besides that there's also concerns over the lost visions of homestead and tom mc call.

**Katz:** OK.

**Karyn Baumeister:** Good afternoon. My name is Karyn Baumeister and I live at 321 NW Royal Blvd. which is north of the planned development. I am also the proud owner of the most current landslide that occurred January 31<sup>st</sup> when we had that rain storm. I have photos to show the damage that it did to my property. I have my geotech that has the measurements and the city is informed of this and I am following and am in compliance with what the city has requested that I do regarding my landslide. So aside from that, I have not attended one of these before, but I did have the opportunity to listen to Vera Katz when she was speaking with Ira Flato on Science Friday March 7<sup>th</sup> and the comments that she made struck a note with me. I do have the tape and where she talked about Portland's livability and how she got involved in stuff by stopping a freeway. And we are attempting to stop this type of development. I don't believe that anyone in our area is trying to completely stop development. We know that it's inevitable to some degree. I just don't feel that it is fitting in with the existing neighborhood. I have also brought some photos of the existing neighborhood, not the planned development. But the kind of neighborhood that we live in. I've lived there for 20 years and in 20 years there have been only 5 new homes that have been developed. None of them have curbs and sidewalks and have requested a lot of variances and changes. They have simply been built and they fit in with the existing neighborhood. We also have three homes of people who have lived in the neighborhood for many many years and they chose to basically gut their homes and remodel their homes so that they could stay in this type of



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environment in our neighborhood. One home, the Macdonalds, razed their home to the ground so that they could rebuild in the neighborhood and live in the kind of neighborhood that we have there today. Ms. Katz said that we have to have public and private partnerships. Partnerships with developers, partnerships with community and partnerships with the citizens. And so personally I am requesting to see what kind of partnership we can have. And to get along with any type of a development. She talks about the quality of life in our neighborhood and that the quality of life is not so much about density, but it's on the design of the growth. And how the additional housing fits in aesthetically to the existing neighborhood. And does the new housing development share the character of the existing neighborhood? And the city planners look into design overlays and they focus on the new design based on what the existing design is.

**Katz:** Thank you. Your time is up.

**Colin A. Macdonald:** Good afternoon Mayor Katz and Commissioners. My name is Colin Macdonald, I live at 425 nw royal blvd. We've lived there approximately 25 years. I have a very brief statement. High on the east facing slope of the skyline ridge west of portland, north and south of the sylvan sunset highway area, will perhaps be the only high density enclave of housing which is out of context with the existing development. It will stand out like a sore thumb against a panorama of wooded hillside for those viewing it from the city. Royal Highlands was platted about 45 years ago by a developer who promptly went broke because the terrain was not conducive to economic development. Homes were then built individually and made attractive places to live by combining and building on multiple existing lots creating a wooded environment with privacy. This new development will not feature either of these things. The Royal Highlands considers itself a community of approximately 20 houses. How can this 21 unit pud be considered as not having a significant impact on the existing community? What is most irritating is the legalistic approach to the zoning code. We simple people think R10 zoning means 1 home on a 10,000 sq ft lot. R20 means 1 home on a 20,000 sq ft lot. And if you ask the citizenry of the city of portland what R10 and R20 mean it probably is very similar to what I have just said. It seems to me the planning staff has mixed and matched and worked out their idea of what all this means. The 86 page plus land use report and hearings officer's decision is nothing more than variances justified by legalistic and creative interpretations of your ordinances. We believe we are being hood-winked by the planning staff. And it is not right. Thank you.

**Arnold Rochlin:** I would like the Council to ask the staff a question after I'm finished. Or a series of questions, actually. Assuming that the current criteria don't apply, which criteria did apply to make the determination as to whether the changes in the application were sufficient to justify a new application or to require a new application? What are the numbers in addition to what they are substantively to the numbers in the Code? And where are the findings addressing those criteria? I think that the answers to that question will probably help decide one of the appellants principal arguments. Second, I'd like to emphasize that it is my understanding that there is over 40 adjustments in this case and variances. Any development of only 21 lots that requires 40 adjustments and variances—it can't in general comply with the code. It's a development that wasn't meant to—a type that wasn't meant to be put where it's being put. And that doesn't even count the fire bureaus adjustments in response to appeals. The fire bureau continues to make appeal decisions in secret without any notice to anyone, without any opportunity for public participation. Despite almost every fire chief that we've had during the last 14 years promising to open up that process. I think you should ask the staff, what are the safety rules regarding roadway and driveway width and roadway and driveway grade that are being violated in this case because they have the approval of the fire bureau? I'd like to reserve the rest of my time for rebuttal. I didn't hear in the original explanation of the procedure that there would be such an opportunity.

**Katz:** No, Arnold, you know you can ask your lead land use person to yield time to you for rebuttal.

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**Rochlin:** I would like to site vizzano vs board of commissioners of Washington county for any party having a right to rebut evidence that is presented.

**Katz:** Kathryn?

**Beaumont:** I believe the vizzano case has been largely superceded by both statutory and code requirements. It's Council's practice to allow parties to present their testimony. We give the appellant right of rebuttal. We don't give other parties the right of rebuttal. I guess it's at the Council's discretion, but Mr. Rochlin has had an opportunity if he's participated below, to respond to any arguments that have been raised below and to address them again today at this hearing.

**Katz:** I think Arnold wanted to do that after he heard the testimony. Is that correct? You have five minutes for rebuttal.

**Rochlin:** It would be a waste of time for me to further disagree with Council. I've made my objections so it's in the record.

**Katz:** Why don't you work with your land use chair?

**Rochlin:** I can't cut his time. Thank you.

**Katz:** I want to make sure -- Arnold raised two questions that I think are legitimate for responses. So make sure that you respond to those after we finish. OK, come on up.

**Ron Janson:** My name is Ron Janson, I live at 319 nw royal blvd. which is right across the driveway from this whole development that they are planning to do. In my previous statement to the hearings officer I just want to reiterate certain things. The sewer system is not adequate right now. We had to just fix the sewer because of land movement and things because there was a leak in the sewer. This is one of the things they wanted to do, is to attach to our sewer. So the riches, who are our neighbors and I will not allow them to use our sewer. The water pressure in the houses around there is not adequate. They change to put in some new things to increase the pressure and it still hasn't brought the pressure up to where it should be. Especially to the riches house and to our house. I really disagree with the zoning changes. The town houses for instances are completely out of character with what has been built in that area already. In terms of the landslides, the one thing that has happened up there is that Miller Rd. had to be closed because of the water caused it to be washed out there. Right now the traffic on skyline blvd that meets at burnside is causing about a 5 to 10 minute delay getting onto burnside from skyline. And if this development is approved and we have 40 more cars, it's going to cause that kind of back up even without the Miller Rd. closure. It is the livability that we all have been talking about. The kind of housing we should have up there should remain the same kind with our 10 or 20 lots with houses on those lots and not completely packed into what they have in their proposal.

**Bob Breivogel:** My name is Bob Breivogel and I live at 272 nw royal blvd. That's approximately right below the proposal and on the east side of the steep slopes. The priority issue I have other than the fact that I think that the whole thing is inappropriate in that neighborhood—is that as a person down hill so to speak, that I'm the one that's going to get the landslide if it occurs. I've spent a good deal of money remodeling my house and I don't see where the applicant has really shown much proof that the land can be safely developed. He has some consultants who basically say, well it looked ok to us, but we won't know until we do the cores. They do notice that the land has some possibility of creeping. Creeping is also, I think, known as a slow landslide. So he's asking the Council to approve this project sort of contingent on his later on going and doing appropriate analysis of the slope to see if they are really safe. These things seem to have a life of their own and I have a feeling that in the future they will find a way to develop it even if the site is inappropriate by doing some additional remedial stuff. This may or may not actually solve the problem. It's not a scientific thing to provide absolute slope stability. You do what you think might work. Maybe it will and maybe it won't. If the slope slides, it takes out Royal, it takes out my house. Then who's responsible. I have insurance, except that it doesn't cover landslides. It covers earthquakes. Unless there is an earthquake and landslides simultaneously. But landslides?

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No. I don't know what the policy is in terms of somebody like that having responsibility for their actions. It seems like they are saying "trust us and we'll do right". I don't think that's fair to us. So that's about all I have to say. Thank you for your time and hope you consider things in and appropriate manner.

**Katz:** Thank you. Anybody else want to testify? All right, let's hear the principal opponent. Fifteen minutes followed by three minutes. Anybody supporting the principal opponent followed by five minutes rebuttal however you want to share it.

**Steve Pfeiffer:** Good afternoon Mayor Katz and Council. Steve Pfeiffer here on behalf of Ron Timmerman, address 1211 SW Fifth, 97204. For the record, the graphic that we have here is in the record, was before the hearings officer, at least as an exact duplicate as the one that was before the hearings officer. With regard to the record, and out of fairness to Katherine who was not at the hearing below, I'll take some responsibility and Erik and I suppose all the rest of us to keep our eye out on the record for you, because again, I think Katherine is a bit hamstrung there. I would note the only thing I've heard yet that I think is probably of any note is that may have been outside the record would have been the photos and some geotech analysis referenced by Miss Baughmeister. I'm not sure she handed anything in. I don't think that is an issue at all. If it is it could be something Erik could confirm. Other than that, I'll introduce my other two speakers at the table. To my right is Bruce Vincent, the planning consultant who's been involved with this application. Lengthy as it has been, time consuming as it has been since April of 1999. And to his right is Ron Timmerman who's the applicant and the resident with his wife of the one house that will remain on the property which you saw in the picture. And if they are half as efficient as I hope they are, they will take approximately 10 or so of the minutes. I'll follow up behind that with some response testimony to what you've heard.

**Bruce Vincent:** Bruce Vincent, Vincent Consulting, 825 Northeast 20th, Suite 300, Portland. As Steve mentioned, I'm the planning consultant for the applicant. The focus of my testimony is to demonstrate that the proposed infrastructure and physical improvements will substantially improve the neighborhood, and there are six points I'd like to make with respect to that. I'll follow those six points up with some closing comments. First, fire safety. The fire bureau has been consulted throughout this process. Recommendations are incorporated in the development plans, three new fire hydrants will be installed within the PUD. The proposed streets will provide safe access for emergency vehicles with well-spaced turnarounds throughout the development for the benefit of the adjacent neighbors as well as Meridian Ridge. The fire bureau has given its stamp of approval to the proposed streets, hydrants and water supply. Item #2, neighborhood connectivity. The Meridian Ridge plan provides for sidewalk system throughout the development, connections to the existing neighborhood and to Skyline Boulevard. These sidewalks will be the first for the neighborhood. Item 3, transportation, along with sites frontage, Skyline Blvd will be widened and improved and near Royal Boulevard the existing access to neighboring property will be approved and realigned to city standards. Item number 4, sanitary sewers. A new sewer system will serve this site allowing neighbors to connect to the new system. B.E.S. states the neighborhood pump station known as Royal Highlands pump station was designed with future development to comprehensive plan densities. Therefore, it can serve the proposed development. The existing home within the P.U.D. will connect to the new sewer system, thereby eliminating a septic system. Item number 5, storm water runoff, the proposed system will capture, filter and detain the storm run-off for the site in compliance with the most up-to-date version of the city storm water management plan. The stated purpose of the plan is to reduce the impact of storm water runoff and pollution. That purpose is accomplished by controlling the design of the stormwater system. Jay Harris, the applicant's civil engineer, has designed the storm system consistent with the stormwater management manual and B.E.S. has given its stamp of approval to the proposed stormwater system. New trees will be planted to aid in storm water control. The city will require an approved deq

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stormwater discharge permit before development commences. Therefore by design the proposed methods for stormwater management methods will improve, not degrade water quality downstream of the site. Last item, 6, slope stability. The p.u.d. provides a series of retaining walls that hold back the soil where cuts and fills are required. The engineer has provided a series of reports that thoroughly analyze site soils for their ability to accommodate development. He has made recommendations to ensure that all site slopes will be protected from slope slippage. The city development staff and civil engineer have reviewed the applicant's geotechnical reports and have given their stamp of approval to the recommendations made by Mr. Hardin. The development has been designed to ensure that slopes remain stable. My closing comments, I wanted to touch on a few issues. First being density. I want to state for the record that the p.u.d. Is not too dense. Erik engstrom states in his staff report that the site can support a maximum density of 23 units and 21 are provided. Therefore, the site is less dense than it could be. The houses are clustered to provide code compliant open space, but from a density point of view, the proposal complies with r10 density. With respect to building coverage, from building coverage point of view the dwellings are covering 22% of the site, which is 8% less than a the 30% allowed by r10, therefore less of the site is covered with buildings than the code allows. Lastly, on the issue of adjustments and variances, title 3 adjustments are justified because 74% of the site is devoted to open space. This requires smaller lot sizes and mr. Engstrom said relative to proposed building foot prints, smaller local sizes, combine that with topography to create the need to seek adjustments. Staff in the affected agencies concurred with the applicant's evidence and found that all adjustments were justified. Staff found title 34 variance were justified, again, based on existing slope contours and minimizing the amounts of cuts and fills. The geotechnical engineer's recommendations to avoid large amounts of fill on the upper slopes. In conclusion, based on the volume of evidence already in the file, including the staff report, the department approval, the hearings officer's report, this is clear this proposed infrastructure and physical improvements will improve the neighborhood and of course we believe it should be approved.

**Katz:** Watch your time if all three of you want to testify.

**Ron Timmerman:** Mayor Katz, commissioners, thank you for the opportunity to be here. My name is ron timmerman, 258 northwest skyline boulevard, Portland, Oregon. My wife and I own the subject property, have lived there for approximately 15 years, and plan to continue living there as we work through this development. The evolution of this area as you think about change in our city and livability, this property and the adjacent property was platted as a subdivision in 1892. At that time, very small lots. So platted in 1892, and then a railroad was constructed through the property shortly after that, and so we've got this industrial or commercial use, if you will, there was a roadhouse built at the end of the railroad, which was on the site approximately where the three pairs of townhouses are located. So we had a commercial use on the property. The total property was logged two different times over the years. It's been subdivided again since that time, so there's -- a lot has gone on over the years. I think the thing that's important to realize, in the late 1970's as the city was developing our comprehensive plan, this neighborhood association, as other associations around the city, inputted to that comprehensive plan. And it was through this neighborhood association and the neighbors, the people who live there, developed that plan and determined that the best utilization of this property was r10. As we originally went to the city in 1995, we submitted a straight subdivision, I was a little naive at that time of eight lots, including our own home, for a straight subdivision and of course that didn't work as we failed to meet the density requirements. We then put together a new team and realized those issues we had to follow applied in april 1999 with our shortly thereafter completed application, and we were at 90% of the requirement for density. So we worked diligently with the city staff and the various departments since that time to continue to tweak that development, incorporate the suggestions and changes that both they require and those that they have suggested. We've met as bruce mentioned, continually --

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continuously with the fire marshal, I was just -- earlier testimony said that we were going to -- we went for a required change by the fire marshal and we needed their approval. That was one that came at just the last minute. It was a small item, but it provides a much safer environment for fire protection. We're going to incorporate fire hydrants and turnarounds which do not exist in the neighborhood at the present time. The turnaround are inadequate to meet the needs of our immediate neighbors. As a result -- of a neighborhood meeting where the neighbors' primary objectives were townhouses we planned to put on the entry street, those we saw as an issue, how we're going to change those around to meet their desires. We had an opportunity to buy an additional piece of property which was added to the original application and we were able to shift the density to better meet the objectives of the neighborhood. We worked hard to maintain the scenic -- along skyline boulevard using the existing two driveways, not adding any others and in fact not removing any trees along skyline blvd. The thickness of those trees will go 70 ft to as much as 120 ft. Thank you.

**Pfeiffer:** Mayor Katz, City Council. I'll offer a few responses to the legal issues. First and foremost as Eric points out, it's not lost on us that this application has taken awhile to get to the point where it is. But on the other hand it has received the full support of everyone of your staff in the various bureaus, from bes to pdot to water bureau and now development services. Secondly I do not need to remind you it isn't a policy call. We're implementing the existing mapping that probably dates back to the '81 plan is my guess for low density residential. It is instead a question of do we meet that criteria? The question of the flexibility to be afforded an applicant in an application is largely governed by state laws, Eric and the hearings officer note. Or as 227.178 (3) as you well know established the rule for moving the goal post perspective that plagued us early in the '80s and early '90s sets in place the criterion effect on the day an application is submitted. There is no outside date short of any missing information not submitted within 180 days of that date doesn't entitle you to the original submittal date. In this case, there is no debate. The application had an incompleteness review. At some point information was submitted and at that point there was a substantial amount of work involving an extraordinary amount of public and private time to bring this application to where it is. It's a tough site. We're not going to deny that. It has slope issues, geotech challenges, it has service provision issues. All of which we believe have been overcome. As a practical matter, whether it be good or bad policy, that is the code that is in place. It's ironic to me to think that when we adopted the new code in July 2002 how many applications did we see come in the day before the new land use code took effect to remain under the old code. Here's one that can't claim that kind of foresight. It had been out there for three years working through the system. Frankly I think the results will be the same under the old or the new. But as a matter of law I think we're left with the existing code. Scott and Arnie both raised some arguments about and cited various code provisions about percentage modification criteria and to what extent an application modification different. There's a subtle distinction to be made here I think and I hope Eric will echo this when he answers those questions. This goes to Arnie's. They're going to the pud chapter and they are talking about modifications to an improved pud. When is it minor, when is it major, what are the respective proceedings? That is not where we are. We're instead back in 700's 730.33.730 which is the application process. There is no minor or major modification of a proposal when it's under review. It's all the same. It can be modified. As we pointed out in our letter to the hearings officer of January 21<sup>st</sup>, the code 33.730.060 actually references substantial modifications to an application. Clearly acknowledging that they are to be allowed and made. Frankly you have a process that's flexible. As a matter of policy if you're going to go there, I would urge you to retain that flexibility in the hands of your staff. To take an application that may not be approvable out of the box and make it approvable to meet your code. To not do that will have everybody back resubmitting, tying up the system in the process. And it's not as if you have extra resources and time, I know, in development services to do that. We're the last ones through

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the system and I would urge you to essentially let this one through the system under those criteria. One thing that is notable, particularly to Mr. Saltzman, we do address the new storm water manual. And it does meet it and we accept that obligation notwithstanding the fact that it is a newer criteria.

Other than that, I guess I would offer one last point. There was a concern expressed by Scott by Balch Creek Plan and the overlay zone. The Balch Creek Plan boundary which did come on subsequent to the application being submitted does have an overlay zone which implements it. It's smaller than the plan boundaries. We're in the plan area, we're outside the overlay. The overlay has a very effective in my opinion provision about construction timing. Essentially its construction only May through October. No winter construction. That doesn't apply to us. But I checked with Ron and he is happy if you were to approve this to impose that condition, even though it's not required. Other than that, we're available for questions.

**Katz:** OK. Let's wait for questions. Rebuttal? Five minutes.

**Rosenlund:** Regarding the testimony talking about Karen's picture, the slide that she had. That's one slide that she had was a slide that has happened since the hearings officer hearing on this case. It's a slide very close to this site. It wasn't brought up during the --

**Katz:** It's not applicable.

**Rosenlund:** Talked about fire safety, transportation issues, with Miller road closed, traffic on skyline has doubled. It takes people even longer from Royal highlands to even get from royal highlands blvd down to burnside. There is a problem up there with all kinds of transportation issues. Let alone the lack of public transportation for this site. Talked about their geotech again and again I ask that they heed their geotech's recommendations again. Talking about the window of construction. They said that the density is less than code, that's not because they wanted it that way. It was because of the constraints of the land. Talked about the railroad history on the property and the rail house which is there on the end. It's probably the one that will be torn down. Don't know if there's any historical significance to that. Variances from the fire stations. Talks about the variances benefits public safety. The variance was for the turnaround areas for the fire trucks and things. We don't consider that a public safety issue. We consider it as what they consider as adequate spaces to turn around stuff and that variance was required to get the approval of this pud. He also said that the staff has always supported this project. I believe that's probably not true. I don't think that staff has the right to form an opinion whether something is to be supported in house or not. They may say he is following the guidelines, but he cannot say that staff supports this project. The app was completed originally for 16 units not 21. Talked about modifications. My comment on the modification portion was that those things would trigger an already approved pud to go back to the review process. We're saying it does the same thing when you're in a review process that all these changes have to incorporate going back to becoming a brand new application.

And that was the point I was trying to make regarding the modifications and let alone the huge number, 40 adjustments. We still find totally unacceptable for this property. In order to make it developable, it shouldn't require that many adjustments on the property. I think the city can do something on this case. They can reject it. They can go back to the Planning Bureau and it can come out as a new application. Something that can be reworked correctly. Still fall within the protections of the Balch Creek Plan which I think it does have to follow at this date now. I would hope that the city considers all the testimony made by the concerned citizens that are going to have to live with this situation when it gets built. They talked also about the scenic qualities. That they have the houses down lower so they won't be in the way of view from the skyline. Part of the scenic corridor, when you look up scenic corridors, the definition says to the degree that even winding wooded roads are important for scenic quality. That perfectly describes this section of skyline blvd. You don't travel to this section to look out for city views or anything. You travel this section because it's a wooded curvy road which is fully within the description of scenic roadways. When they put these houses in there there will be parking lots, housing roofs, all visible from the

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scenic corridor that should be protected for its winding, wooded road situation. Thank you very much.

**Katz:** You have 38 seconds.

**Rosenlund:** I could go on for hours, but I figure I've had my say.

**Katz:** Alright, staff. Council, can we have the large overview questions of staff and then we'll get to a little more specific questions of either the applicant or the appellants.

**Sten:** I'm still trying to frame my question. I guess I want a little more discussion about when is an application complete and how much can you modify it. Can you give me your rationale in general on that?

**Engstrom:** Sure, there are two kinds of questions as we go through a review process. The first of which is have they submitted the right kinds of information that are asked for in zoning code? There is a list of submittal requirements and we go down through and check off have they submitted those items? The second part of the review process, once we have determined they have a complete application is to review the content of that material and decide if we can approve it.

So an application will become complete at a certain point. But it may or may not become approvable at that point, and that's what happened in this case. We determined that they had submitted the correct information but when we looked at that information we determined it couldn't be approved without modifications. And then the time line went on from there as the applicant worked with us to make those changes.

**Sten:** I'm not looking, I mean I think there needs to be judgment in the process. Is it a judgment call when you would allow an applicant to modify something versus when you would say—let's say I put in all the material but it just was completely unapprovable. Could I come in and change everything and say "but I got my application in, so it's just a modification to the application"? I mean that's the logical—it wouldn't have to have anything to do with what was actually approved. Is that true? Could I do that as long as I had all the right material in on the first application?

**Engstrom:** There's obviously a range of variations here, but in this case what we're talking about is an application that came in as a planned unit development subdivision and left the process as a planned unit development subdivision. It was reconfigured during that process to provide more open space and move some of the development to the flatter portion of the site. There were definitely changes in this case, even property was added to—which was flatter than the rest of the site which provided a mechanism to better meet the intent of the pud criteria. So all of these changes in this particular case were specifically because of items listed by staff initially as to things wrong with the application. You could imagine a project that came in as a conditional use for a church and wanted to change their application to have an airport approval, and obviously I think that would cross some line as to what would be a reasonable change. I think one of Mr. Rochlin's questions—There are no specific criteria in the code that address what that limit is. And lacking that we look to the state law that was cited by the applicant's attorney in the ors that determines if the application is deemed complete within 180 days, we're required to review it under that code. It doesn't provide an outside end on that. We feel that unless we allow changes to be made, the review process, as the hearings officer pointed out, would not be meaningful if changes could not be made in response to staff concern.

**Sten:** I guess in using that judgment of the church analogy is pretty clear. Is this from your experience a close call, whether this is a different application. Or is it just run of the mill changes that one should expect as process.

**Engstrom:** It's fairly routine to see an increase or decrease in the number of lots proposed with an application because we do have minimum and maximum densities and sometimes the applicant misses that when they make their application. So it's very routine. To change the number of lots from 16 to 21 wouldn't be that unusual. It's more unusual to add a property to it, but in this context

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that has been done in other cases. And especially in this context where the addition of the property was done to better meet a request from staff to find a flat part of the site to put more of the density.

**Katz:** Could I follow up on that? Arnie asked the criteria. You said there weren't. Where's the tipping point? Where would the tipping point be for you as a staff person on this application?

**Engstrom:** I think if it's coming in as a residential subdivision and leaving as such, we've tended to take a fairly liberal approach to that tipping point. If the fundamental review being requested were to change, then I think that might be a tipping point. But in this case that didn't happen. We have a residential subdivision and we finished with one. It's very common during the review process to find additional code requirements that might not be met and for the applicant to say, "oh gee, I need to ask for an exception to that". So the addition of an adjustment or noting a different variance during the process like adding the fire code exception is not that unusual. It would substantially reduce our flexibility if we had to tell people to go back to the drawing board.

**Sten:** Do you have the hearings officer's opinion in front of you?

**Engstrom:** Yes I do.

**Sten:** On page 5, the first paragraph, the hearings officer says "sites". I was interested in the hearings officer's description of why they thought the proposed application still stood under the old code. Essentially he then goes into a thing that surprised me and cites a letter from planning to the applicant of last November which it says "if you intend to make any substantial revisions to your present application you must do so before March 26, 2002" and goes on. To paraphrase, because if you don't you'll be held to the new code requirements. For the benefit of the audience—he's not sure if that's binding or not, so that throws some gray on it. But what I'm confused about is that point of view that the planning staff took in November seems to be in contradiction with the point of view so long as you got it in there it doesn't matter. You can make any changes that come along.

Suddenly last fall we were saying "Boy, if you don't make the changes now, it's a new application." Are those different or am I just missing the tie in to those decisions?

**Engstrom:** Having been the staff that sent that letter, I can answer that. At the time we were anticipating code changes and were just beginning to look into what's going to happen to the existing cases. Since then we've been advised that the content of that letter was not legally correct.

**Sten:** Ok, so that was just wrong. That explains it.

**Katz:** Questions? Go ahead.

**Saltzman:** First of all, clarification, the driveway serving 5 & 6. Is that an existing driveway or new?

**Engstrom:** There is a graded rough roadbed at that location. It would be a new driveway.

**Saltzman:** I thought the applicant said that all traffic on the skyline would be served by the two existing driveways.

**Engstrom:** Yes I think that's what they're talking about. There is a really rough road that sort of leaves skyline at that point and that's where the new driveway would be constructed. There would be further improvements to that roadway though.

**Saltzman:** So royal blvd and then the two proposed driveways will be the access to this pud.

**Engstrom:** Yes.

**Saltzman:** I guess the other question I had is about the landslide hazards issue. You mentioned there is some geotechnical evaluation that's required to be done under the old code. And there is a landslide hazard analysis that has to be done under our new code. And you didn't seem to say there would be much significant difference if this analysis were done under the new code. Did I understand that correctly?

**Engstrom:** Under the old Title 34 there was a two-step approach to looking at it. The first step was a general analysis of whether the site could be developed safely. That was under the land suitability criteria. During a preliminary subdivision you don't always have all the details of the street locations and the detailed engineering done at that level of detail. So there is a second step



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usually required through conditions of approval that the specific engineered street plans and designs then go through a further analysis that is specific to that design. At that point the engineers look at the actual retaining walls and evaluate their structural stability. Under the new code it's very similar, but the preliminary analysis also adds the question of geography to it and it doesn't just ask the applicant to evaluate "the site", it asks them to distinguish whether there is any particular part of the site that is safer or not. The reason I think we've said that that wouldn't make a lot of difference in this case is that we've aimed most of the density on this site towards the flattest part of the site as a result of some of the geotechnical work and the staff analysis. So we're not convinced that it would turn out any differently, but the criteria are slightly different.

**Katz:** Let me ask 2 questions. First, are there many questions like this that are going to be before us?

**Engstrom:** Probably not. There are about four pud remaining in the system that may or may not be completed at any point. So those are the ones most likely to reach you. One of which was at the hearings officer on Monday. Under the old code. There are probably under a dozen subdivisions which could range anywhere from 4 lots and up under the old code still in our system. Some of those would obviously still have a chance to reach you. There are also about 30 minor partitions, but those are usually type 1's which wouldn't come to you. They would be appealed directly to LUBA.

**Katz:** OK, I ask that question because depending on what the Council wants to do, we have to be very clear if the Council decides to deny this application as to what the reasons are. We have to be somewhat consistent on the other applications. I want to flag that. The other one just out of curiosity, if the applicant came in today, would the same application-what do you think the hearing officer would say? What would the recommendation of the staff be?

**Engstrom:** It's hard to say without going through the review process.

**Katz:** I understand, I'm not holding you to every review element. What would concern you if anything.

**Engstrom:** The major changes aside from the land suitability, the one I already mentioned, are that the new code has a different threshold, and probably a higher threshold of tree preservation. But in this case because we had the scenic overlay we're already forced to address that. So I'm not convinced that would have changed substantially. The new code also provides probably a little more leverage in terms of the architectural design. Whereas the old title 34 was fairly silent on that. So if the application came back in it probably the City would have to review the specific designs of the buildings. In this case, that wasn't part of our review.

**Francesconi:** A couple of questions along this line too. So, if it were the new code, the question of density R10 and townhouses which are a concern of the neighborhood. That doesn't change does it, under the new or old code?

**Engstrom:** No, in fact the new code allows more flexibility towards that. Under the old code, the only way to have a lot size that differs from the density-when we talked earlier we heard about the R10 being 10,000 sq ft lot, and that was generally always true in the old code, except through this pud process where you could ask for variation of lot sizes. The new code allows by right the variation of lot sizes without the review process.

**Francesconi:** But under the new code regarding the landslide question and I am not clear how many units are being built on the steep slope. But before we come to that, on the old code, I think the test is, can you engineer your way out of a hazard? And under the new code, it's where's the least risk of hazard on the site. And that's two different burdens, as I see it. Under the new code it would be harder to build on the steep slopes as I interpret it. Is that right?

**Engstrom:** Yes, there would be a higher burden on the steep slopes. And the reason I'm saying it wouldn't turn out that much differently is that in this case they did cluster most of the density on the flatter portion. The lots up along skyline, lots 1-6 essentially are the most steeply sloped lots. Lot 1

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already has a house on it, so we know that it can be built on. Those lots along skyline are definitely the steepest.

**Francesconi:** So there's 5 other lots that can be built under this proposal?

**Engstrom:** On the steepest part. The lower portion of the slope is flatter.

**Francesconi:** Following up on Commissioner Sten's point, I guess it is the new land coming in to this thing that concerns me about this becoming a new application at some point. I guess my question isn't for you, but for our lawyer. What's the law in terms of when is enough to be a new application?

**Beaumont:** There is no bright line in the law. I was looking at some of the case law before Council today and I will give you an example. One of the cases we had a long time ago involved the River Forum bldg down on Macadam Ave. During the course of that review the application was modified substantially and LUBA described the changes as being the applicant dropped the second phase building, moved the first phase building, eliminated a parking lot, reduced the length of the parking structure and made similar kinds of changes. And the opponents of that project argued that the changes were so substantial that they should have filed a new application. The City didn't require a new application. It allowed the modifications to be made in the review process. On appeal to LUBA, LUBA said the city was correct. Essentially what it says is that the city has substantial latitude in determining whether modifications to an application can be made and how far they go before they constitute a new application. In this case even given all those modifications, a new application wasn't required. That's an example of what the law is.

**Francesconi:** Then I don't have any more questions of staff. I do have a question for Steve Pfeiffer and his client.

**Katz:** Any additional questions of the staff that's here?

**Engstrom:** I believe Arnie asked an additional question which I need to address at some point.

**Katz:** Correct.

**Saltzman:** Just when you mentioned the greater control over design in the new code, just got me to thinking. Because this is a scenic overlay and it is I believe in a wildlife protection zone, are there requirements or restrictions about fencing, use of reflective materials on the houses and things like that?

**Engstrom:** It's not in a wildlife designation. The city's implementation of that would be through the environmental zones and there isn't an environmental zone. It is in the scenic overlay which includes standards for tree preservation and special set backs from the scenic drive. And then there are limitations on fence height within the first certain distance. In this case the applicant has provided an open space area in front of the houses in a strip along skyline and then the road dips down behind that open space area so the houses are below the graded skyline. You can see over the tops of houses from skyline.

**Saltzman:** So there's no reflective material restrictions or anything like that on this because of that.

**Engstrom:** I'm not aware of any at this point I can look at that while the applicant is answering questions. But, I'm not aware of any.

**Katz:** Let me ask you another question with regard to the design. We can place that as a condition, can't we? Old code new code. That is we've done that before, nod yes – no. Then I want to ask you what the condition on the design would be under the new code.

**Engstrom:** Under the current code originally they requested a tree removal review, because they were not meeting --

**Katz:** I'm talking about the architectural design.

**Engstrom:** I'll get to that. Through that review we may have had some nexus, but they've actually dropped their request. So at this point their meeting all the clear and objective standards for the scenic overlay. So it might be a little difficult to find a nexus to regulate the design if there meeting the code standards for that scenic overlay.

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**Katz:** Meeting the code standard under the old code?

**Engstrom:** Under both.

**Katz:** Under both. All right let me think about that. Somebody had a question of Steve? Steve would you come on up.

**Francesconi:** Actually I'll ask you and you can ask your client. Its five lots that are going to be built on this steep slope, five new lots?

**Pfeiffer:** That's correct.

**Francesconi:** Under the new code, if we were going to chose the new code do you agree we would have more ability to limit those lots, the development of those lots?

**Pfeiffer:** I will say that I've only been through the new code, I'm halfway through it in two cases right now, one of which has a slope. And what, and Eric can correct me, my sense is as he suggested the new code doesn't prohibit. First of all as I recall I think there's only one lot of these 21 which has a slope of less than 20%. I think, so the whole site has some degree of slope on it. What the new code does is its more proactive as I understand. And forces more analysis up front to try and avoid areas of steep slopes so that we don't have to fall back on, as somebody put it the engineering solution, the mitigation and the like. But I don't think that if you can't meet the minimum density which is you well know we also built into the new code to meet a variety of policy objectives. You then resort to the steeper slopes and I think your back to the engineering. I think what it does in short is it says don't start with the engineering solution go through the more passive solutions to achieve public health and safety on slope issues. I think you still because of the minimum density may very well get back to under the new code. Some reliance on the engineering solution.

**Francesconi:** Can you limit, can your client put fewer houses on that slope? Then this proposal?

**Pfeiffer:** Fewer, I'd have to let Ron answer the fewer part. I do know it would be very difficult to relocate the same number of units on that slope. As Eric suggest that is what has been one of the major modifications to this application over time. And that's what resulted in adding the additional land is to get them off the slope. Fewer is one I'll have to let Ron answer.

**Katz:** Would you be willing to adopt the more stricter standard on the soil stability on the new code. In other words - -

**Leonard:** Can I ask a question at this point because I'm a little confused by this line of question.

**Katz:** We just - -

**Leonard:** Can I ask a question of our city attorney? I'm looking at a hearings officer's report, I won't read all of the details, but he says this application must be approved or denied based on the criteria in effect on April 15<sup>th</sup> 1999. What authority does the council have to apply the subsequent code that's being asked about now to this application?

**Beaumont:** I guess in order to reach that result the council would have to conclude that the hearings officer misinterpreted the law. And that the application somehow did not become complete until after the new code came into, well the council's latitude is somewhat limited in this regard. Because once the application is made complete the standards and criteria in effect on the date the application was filed are the standards and criteria that apply to the review. So if the application was filed before the new code became effective that was made complete after the new code became effective it's the standards before that apply.

**Leonard:** Thank you and I guess this is the paragraph following the one commissioner Sten quoted from and I would refer the council to page 5. It says in the 2<sup>nd</sup> paragraph and he just I think makes it clear, at least its clear to me that we use the criteria in effect as of April 15, 1999.

**Katz:** Don't misunderstand me. I'll just state my opinion I think that the hearings officer was right. What I'm asking for there are a couple of issues that we could address as conditions of approval. Kathryn we've done that before. And if the applicant is willing to consider it you can

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meet the hearings officer's decision and the application. But you could also support some of the elements that have been raised during this testimony.

**Sten:** I think this council discussion I think - -

**Katz:** I asked him a question.

**Pfeiffer:** I'm happy to answer. There are 3 things that and I understand your comment and one thing I've learned about the nexus requirement under dolan is it becomes a little less significant if the applicant offers in a condition to address an issue whether there's a so called nexus or not. I've already that we can meet the ground disturbances criterion if need be and that's of note in the balch creek overlay. And apply that to our site. Secondly mayor katz, you addressed or commissioner one of you had raised the flashing, the visual impact of the housing and one of you asked could you impose that as a condition. And I think staff in a cautious way said there may not be a nexus there. I would tell you and I haven't confirmed this with the applicant, that I do not believe this would be a problem at all for us. But given the scenic overlay and even though it only reaches hundred feet, I'd have to look and see whether our building envelopes are outside of it. I'm certain there outside that 100 feet. If you wanted to impose an architectural standard that ensured some form of avoidance of obnoxious building materials or visuals, the place to that I think is on page 14 of the staff report where under approval criteria in number one for the pud. There is the most flexible standard in bullet number 6 gets as close as anything as a source for that which would be the attractive and safe living environment in residential zones. Now, I would be ill advised to tell you that I would ask if you'd feel free to go ahead and put the full design overlay standard on us out there, because that's not where I think you were going. But if you wanted to provide a reasonable condition that ensures that were not out there putting garish architectural elements on these buildings, given the proximity of the scenic particular in lots one through 6 along the frontage there. I don't think that's going to be a problem for us. And the third question I'm going to ask Dwight to address which is a technical one far beyond me of whether we can accept the new geotech analysis under the new code and dwights our geotech and he'll tell us that right now. I would, while he's coming up here, call the council's attention to condition b4, is where your staff at development services has provided additional protection on the geotech. And what it requires as the hearings officers notes we didn't do borings. Theres further geotech analysis that is warranted. And we also fully agree with condition four which requires that lot by lot building by building geotech analysis as a condition of final plat for those building envelopes. So there is more analysis that's required under condition b4 already. And Dwight will tell us what the new code might do.

**Dwight Hardin, Geotechnical Resources:** My names Dwight hardin, I'm with geotechnical resources. We're at 9725 sw Beaverton-hillsdale highway. We're a geotechnical engineers and geologist and engineering geologists. For a development like this on sloping ground our work is typically, excuse me, completed in several phases. The initial phase is a preliminary evaluation or an initial evaluation that's usually completed as part of the projects submittal or application as we have done to date for this project. We've updated it as the project has evolved over the years. Next as the design of the project would be initiated and evolved, we would complete a fairly detailed geotechnical investigation of the project to develop engineering criteria and guidelines for grading of the site, construction of retaining walls, evaluation of slopes stability and the founding of residences on individual lots. Our work would be summarized in a report and we would also review the grating and development plans for the development. Next, during construction our firm would provide on site construction services to evaluate the way the construction is performed to make sure that work is done in conformance with the plans and specifications and our recommendations. After that houses would be designed and built on the individual lots. Normally on sloping lots such as this we're involved in reviewing the house foundation plans and then again as developments such as forest heights and other developments in the west hills. Actually being on site during foundation excavation and - -

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**Francesconi:** Are you getting to the answer, this is all good but that wasn't the question.

**Hardin:** I guess the answer is that it's a very diligent and involved process and I believe it more than meets the intent of the existing code.

**Francesconi:** So it would, the existing code – current code.

**Hardin:** The current code. That's my understanding that this process would meet the current code.

**Francesconi:** Sorry to interrupt.

**Hardin:** No problem.

**Francesconi:** You were getting to the punch line.

**Katz:** He's an engineer.

**Saltzman:** Doesn't the new code require a landslide hazard study? And the old code doesn't.

**Hardin:** In essence we have completed a landslide evaluation or slope stability evaluation of the property to date. A more detailed landslide evaluation would be completed as part of the final geotechnical investigation, for the purposes of incorporating refinements in the site evaluation and the final design of the project.

**Saltzman:** And could that subsequent landslide study result in you saying you shouldn't build on one of these lots after all given the landslide risk?

**Hardin:** If that's our finding we would make that recommendation yes.

**Pfeiffer:** Actually, that's a fair point commissioner. The way its structure right now even if you did nothing, as Dwight points out, condition b4 says the building permits applications has to be accompanied by that level of more geotech analysis. I guess it's not inconceivable or its likely if Dwight believed in his best professional judgment that there was no engineering solution to allowing construction on that lot he's not going to be able to stamp a report. Because the condition requires a registered engineer for a reason and that's the stamp. And if it came down to that we would have a lot that frankly wouldn't be able to support a building, because we couldn't submit the thing required for the building permit. We'd be left with solving that problem but that's where you would have to go isn't it?

**Hardin:** Yes.

**Saltzman:** And bureau of development services would review that report then?

**Pfeiffer:** Yeah, that conditions on page 74 right in the middle of the page. I think that's mike hayakawa's job.

**Katz:** Further questions? If not I'll take a motion.

**Leonard:** I move to accept - -

**Sten:** I'm sorry, I have one more question.

**Katz:** You have one more question.

**Beaumont:** And I think eric had a response to - -

**Katz:** Oh yes, eric come back and respond to arnie's question. We'll go and take a question from commissioner sten and then - -

**Beaumont:** Mayor katz a final suggestion, given the length of your discussion with the applicant and with the staff. It may be appropriate to give the neighborhood a minute or two.

**Katz:** Fair enough.

**Engstrom:** If I understood it correctly, mr rochlin's second question was to ask us about the 40 some variances in adjustments that were requested. And why that would be appropriate to approve that many. In response the zoning code talks, lays out clear and objective standards for development. In that code it also states that the standards are intended to be applied to regular standard lots and normal situations. But it also recognizes there should be an exception process for unusual situations. That's in the adjustment chapter where it outlines when adjustments and exceptions can be made. And one of the examples when an adjustment or exception might be made is a slope site. It's our contention that this site isn't representative of a lot of sites throughout the portion of portland that's divided into regularly shaped flat lots where our standards would make

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sense to apply. And that it is built into the zoning code an expectation that on steeply sloped lots of this nature that we would grant exceptions to better meet the purposes of the code. I also wanted to point out that the 40 some exceptions are actually two different standards. One being building coverage the other being paved areas. In this case its not as I said before that there having unusually large buildings or unusually large paved areas, its because the lots are small to cluster the development to the flatter portion of the site that we have to consider these exceptions. Its not that they've asked for unusually large paved areas or building coverages. And as the applicant pointed out the overall building coverage when you include the open are is actually lower than the standard. Its because we apply it on a lot by lot basis that we had to look at an exception. I'd like to ask if I correctly characterized that?

**Katz:** He was talking. I think you did.

**Engstrom:** Okay.

**Katz:** Commissioner Sten.

**Sten:** Just one more question. When in the process did the new land and the five new lots come into the proposal? Was that in the 2002 submittal or in the 99?

**Engstrom:** The first time it formally showed up on paper was in the 2002 submittal. But it had been under discussion for probably, maybe the applicant might be able to answer this better, but I recall it had been discussed and presented visually to us for at lease a year or 6 months before that.

**Sten:** Thanks.

**Katz:** Why don't you come on up. You've heard the discussion, somebody from - - you, relate it to what you heard the conversation, that would be helpful.

**Rosenlund:** I do have one question your were talking about if it comes in residential and goes out residential, does that mean that 4 units being changed to one hundred units is the same thing. That part doesn't make sense to me. That they don't have an end to that. do you have some other questions then?

**Katz:** No, I just, does anybody on the council have additional questions?

**Rosenlund:** I did have some comments on their talk about the steep slopes. The majority of those slopes are over 70%. On an over 45% on all these development lots. That's if there's snow on it that's avalanche territory. These are extremely steep slopes that they plan on doing development on in the fragile balch creek basin.

**Saltzman:** I guess I'd like to ask a question of mike hayakawa.

**Katz:** Okay. Thank you. Mike. I also want to correct both applicants and the neighborhood association. The bureau of development services is not the bureau of planning.

**Saltzman:** Sounds like your shop deals with issues of geotechnical and landslide hazards. Once you get this subsequent report about the constructability on the site and you look at it, can you deem that the engineers report indicates that there are lots that should not be build under our city code or due to extreme landslide hazard or risk?

**Mike Hayakawa, Bureau of Development Services:** George helm is our civil engineer in the site development section, seen to my left. I'll ask him to respond to that.

**George Helm, Civil Engineer:** The follow up report we would expect for the actual refilling permit for the grading, the original grading work on subdivision, we would require a complete geotechnical report with test data and recommendations, final recommendation from the geotech. As well as a final review of the civil engineers design of the retaining walls, streets and underground utilities. That work itself will be reviewed under city code title 24.70. which actually sites the grading permit and sets the geotechnical guidelines the applicant needs to meet.

**Saltzman:** So, does that include, I'm trying to get at does that give you the discretion to disagree with the stamped engineers report about a particular, about the build ability of a lot given land slide risk?

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**Helm:** Yes, it would give us that discretion if some information turned up in the report that may apply.

**Saltzman:** You could reach a different interpretation?

**Helm:** Yes we could.

**Saltzman:** Thanks.

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

**Leonard:** Ready? I'd move to accept the decision of the hearings officer.

**Katz:** With all the conditions listed.

**Leonard:** As submitted.

**Saltzman:** I have two additional conditions I wanted to - -

**Katz:** All right, why don't you hear his and see if you want to adopt them as a friendly amendment.

**Leonard:** Sure.

**Katz:** Go ahead.

**Saltzman:** The first condition is what the applicant offered to do and that is to use the May through October construction season. The second one, I think, also is being offered by the applicant and that is to have some sort of condition written in there that the building materials be sensitive to the scenic overlay to the environment. I'm not sure what the right wording is but I think you get my point and would be able to craft something as a final condition on that.

**Katz:** Similar to the point but related to residential.

**Leonard:** Absolutely. So that would be incorporated in my amendment.

**Katz:** This is a tentative then? A tentative decision?

**Leonard:** I'd like to speak to it if I could. This is the fourth hearing I've been involved in since being on council. And the first time I haven't agreed with the neighborhood association. I've generally been in the minority on that. The reason is is that I do think that I have all of us have a responsibility to apply our judgment to the criteria brought forth by developers. In every case but this I have felt that the developers have not shown that they have approached the project that they wanted in those cases, in a developed, in a balanced manner that met our cities own criteria. I do think that we have to have predictability in our codes and some degree of finality. Notwithstanding my concerns in the other hearings I've been involved with, I think the applicant has met the cities criteria that it is balanced which you're asking to do. For those reasons I think the hearings officer made a reasonable decision in this case.

**Katz:** Okay. Did I get a second to the motion?

**Saltzman:** Second.

**Katz:** Roll call.

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

**Sten:** I'm not going to support the motion. I think that it's a close call and I think it's a matter of judgment. I don't know that the judgment is crystal clear on either side. For my sense that the hearing officer is right that we have to stick with the date the application was complete. I don't have any argument that it was complete in april. My argument with it is I think that there was enough changes made in 2002 that given the lapse of time it would have been reasonable to say there should have been a new application. I think the time elapsed and I think the developer has worked in good faith but I think when it takes that long to get, three years, to get your new proposal you run the risk especially when it's a very, very different proposal that you ought to apply again. And in this case I think they should have applied again. No.

**Katz:** Mayor votes aye. The motion passes. We stand adjourned.

**Beaumont:** We need to set a continuation date.

**Katz:** Oh the date, sorry.

**Beaumont:** I think it has been suggested three weeks?

**Katz:** Everybody going to be here in three weeks for the final vote?

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**Moore:** Yes. That would be April 30<sup>th</sup> and yes everybody's in.

**Katz:** Okay, fine. April 30<sup>th</sup> and we stand adjourned.

At 3:52 p.m., Council adjourned.