



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **16TH DAY OF MARCH, 2005** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Leonard, Saltzman and Sten, 5.

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

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

| COMMUNICATIONS | | Disposition: |
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| 187 | Request of Thomas Edward Mullen to address Council regarding an appointment and to get an update from Commissioner Sten (Communication) | PLACED ON FILE |
| 188 | Request of Richard L. Koenig to address Council regarding vehicle titles (Communication) | PLACED ON FILE |
| 189 | Request of Paul Phillips to address Council regarding dog attacks (Communication) | PLACED ON FILE |
| 190 | Request of Charles E. Long to address Council regarding Saturday's rally to end the debacle in Iraq (Communication) | PLACED ON FILE |
| 191 | Request of Carlos Jermaine Richard to address Council regarding a simple prayer (Communication) | PLACED ON FILE |
| TIME CERTAINS | | |
| 192 | TIME CERTAIN: 9:30 AM – Establish a Development Services Fee to cover costs and improve service of the Land Use Services Program and adjust permit fee schedules to minimize the impact of the new fee (Ordinance introduced by Mayor Potter) | PASSED TO SECOND READING MARCH 23, 2005 AT 9:30 AM |

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| <p>193 TIME CERTAIN: 10:00 AM – Declare intent to initiate local improvement district formation proceedings to construct street improvements from Whitaker Way to west of 136th Avenue in the NE 135th Avenue and Prescott Court Local Improvement District (Resolution introduced by Mayor Potter; C-10015)</p> <p>(Y-5)</p> | <p align="center">36300</p> |
| <p>194 TIME CERTAIN: 10:15 AM – NOTE: TO BE CONTINUED (date to be announced) Establish registration and reporting requirement for lobbyists and city officials (Previous Agenda 153; add Code Chapter 2.12)</p> | <p align="center">REFERRED TO COMMISSIONER OF PUBLIC UTILITIES</p> |
| <p align="center">CONSENT AGENDA – NO DISCUSSION</p> | |
| <p>195 Accept bid of Moore Excavation, Inc. for Lambert Trunk Relief and Reconstruction for \$3,262,491 (Purchasing Report - Bid No. 103551)</p> <p>(Y-5)</p> | <p align="center">ACCEPTED PREPARE CONTRACT</p> |
| <p>196 Accept bid of Payne Construction, Inc. for Fire Stations 6 and 17 remodel for \$953,310 (Purchasing Report - Bid No. 103609)</p> <p>(Y-5)</p> | <p align="center">ACCEPTED PREPARE CONTRACT</p> |
| <p align="center">Mayor Tom Potter</p> <p align="center">City Attorney</p> <p>*197 Amend Legal Services Agreement with Brown Reavis & Manning for outside counsel (Ordinance; amend Contract No. 34620)</p> <p>(Y-5)</p> | <p align="center">179113</p> |
| <p align="center">Office of Transportation</p> <p>*198 Accept a grant from the U.S. Department of Housing and Urban Development in the amount of \$198,820 for the Portland Streetcar Eastside Extension Project (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179114</p> |
| <p>*199 Accept a grant from the U.S. Department of Housing and Urban Development in the amount of \$89,469 for the Portland Streetcar Eastside Extension Project (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179115</p> |
| <p>*200 Grant revocable permit to Paddy's Bar & Grill, to close SW Yamhill Street between 1st Avenue and Naito Parkway on March 17, 2005 through March 18, 2005 (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179116</p> |
| <p align="center">Police Bureau</p> <p>*201 Authorize donation of eighty less lethal shotguns to the City of Redmond Oregon Police (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179117</p> |

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| <p>*202 Authorize an Intergovernmental Agreement with the State of Oregon, Department of Transportation and the Oregon Military Department to allow the Police Bureau to construct a building on state property at Camp Withycombe in Clackamas County (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179118</p> |
| <p align="center">SECOND READINGS</p> | |
| <p>203 Accept an Intergovernmental Agreement with the State of Oregon Employment Department to provide confidential records that include client specific wage and hour information on an as needed basis for the Workforce Development program and provide for payment (Second Reading Agenda 161)</p> <p>(Y-5)</p> | <p align="center">179119</p> |
| <p>204 Amend contract with Central City Concern/CHIERS Outreach Program to provide services to intoxicated individuals by an additional \$19,000 for a total of \$363,320 and provide for payment (Second Reading Agenda 162; amend Contract No. 35482)</p> <p>(Y-5)</p> | <p align="center">179120</p> |
| <p>205 Authorize subrecipient agreement with City of Gresham for \$976,205 for the HOME Investment Partnership Program and provide for payment (Second Reading Agenda 163)</p> <p>(Y-5)</p> | <p align="center">179121</p> |
| <p align="center">REGULAR AGENDA</p> <p align="center">Mayor Tom Potter</p> <p align="center">Office of Management and Finance – Human Resources</p> <p>206 Create a new Nonrepresented classification of Neighborhood Intervention Specialist and establish a compensation rate for this classification (Previous Agenda 171)</p> <p>(Y-4; N-1, Adams)</p> <p>Motion to reconsider: Moved by Commissioner Adams and seconded by Commissioner Sten.</p> <p>Motion to remove the emergency clause: Moved by Commissioner Sten and seconded by Commissioner Leonard. (Y-5)</p> | |
| <p align="center">Office of Transportation</p> | |
| <p>207 Authorize the Wind Energy System Funding Agreement with the Energy Trust of Oregon, Inc. and accept a payment of \$36,117 to partially offset costs to construct a wind turbine at Sunderland Yard (Ordinance)</p> | <p align="center">PASSED TO SECOND READING MARCH 23, 2005 AT 9:30 AM</p> |
| <p>*208 Authorize negotiations for the acquisition of temporary easements and street dedications necessary for construction of the East Columbia to Lombard Connector Project and authorize the City Attorney to commence condemnation proceedings, if necessary, and obtain early possession where required (Ordinance)</p> <p>(Y-5)</p> | <p align="center">179122</p> |

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| SECOND READINGS | |
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| 209 Authorize limited tax revenue bonds to provide financial assistance for housing projects (Second Reading Agenda 181) (Y-5) | 179123 |
| 210 Authorize negotiations for the acquisition of temporary easements and street dedications necessary to complete improvements to Hawthorne Blvd., between SE 20th and SE 55th Avenues and authorize the City Attorney to commence condemnation proceedings, if necessary, and obtain early possession where required (Second Reading Agenda 183) (Y-5) | 179124 |

At 11:21 a.m., Council recessed.

March 16, 2005

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **16TH DAY OF MARCH, 2005** AT 6:00 P.M.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Leonard,
Saltzman and Sten, 5.

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

| | | Disposition: |
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| 211 | <p>TIME CERTAIN: 6:00 PM – Clarify elements of review process and nontransferability of waivers and recommend funding for evaluation of certain claims filed pursuant to Chapter 5.75 of the City Code (Resolution introduced by Mayor Potter)</p> <p>Motion to accept amendment to the first BE IT FURTHER RESOLVED to insert the words “regular mail” and “sent within five business days”, delete the word “the”, and add BE IT FURTHER RESOLVED, the Program Manager is directed to return to the City Council after working with the Bureau of Development Services, the City Attorney, the Bureau of Planning and the Citywide Land Use Group, to develop a process by which settlement of certain valid Measure 37 claims may be pursued through proactive negotiation between claimants and the City. The purpose of negotiation should be to mitigate legal costs, claim liabilities, and impacts associated with waivers of City land use regulations where property owners are interested in an outcome other than compensation of their claim. In development of this draft policy for City Council consideration the following should be consider by staff: a. Once established, the alternative process should be offered to claimants with a valid claim at the earliest possible stage of the review process. If possible, this process should include a suspension of the 180-day timeline given to municipalities to process Measure 37 claims while the parties are pursuing an alternative outcome. b. Notification of the City Council hearing to consider the proposed resolution should be sent to all property owners within 400 feet of the site. c. The Program Manager should report back to the City Council with a proposal consistent with these provisions not later than May 20, 2005: Motion by Commissioner Adams and seconded by Commissioner Leonard. (Motion withdrawn by Commissioner Adams)</p> | <p>CONTINUED TO MARCH 30, 2005 AT 3:00 PM TIME CERTAIN</p> |
| 212 | <p>Establish a claim filing fee and create a private right of action for neighboring property owners against a successful Measure 37 claimant (Ordinance introduced by Mayor Potter; amend Code Chapter 5.75)</p> <p>Motion to strike the sentence, if the City Council denies a claim, the Program Manager shall bill the claimant for the city's actual cost to process the claim: Moved by Commissioner Saltzman and seconded by Commissioner Leonard. (Y-2; N-3, Adams, Sten and Potter) Motion Fails.</p> | <p>PASSED TO SECOND READING AS AMENDED MARCH 30, 2005 AT 3:00 PM TIME CERTAIN</p> |

At 7:10 p.m., Council recessed.

March 17, 2005

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **17TH DAY OF MARCH, 2005** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Leonard,
Saltzman and Sten, 5.

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

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| <p>213 TIME CERTAIN: 2:00 PM -- Appeal of Corbett Terwilliger Lair Hill Neighborhood Association against Hearings Officer's decision to approve the application of Gary and Debbi Osterholm for a zoning map amendment from CO2, Office Commercial 2 to CXd, Central Commercial with a design overlay zone to allow for future residential and office or retail development at 2626 and 2601-2605 SW Water Avenue (Hearing; LU 04-051956 ZC)</p> <p>Motion to deny the appeal and uphold the Hearings Officer's decision: Moved by Commissioner Leonard and seconded by Commissioner Saltzman.</p> <p>(Y-5)</p> | <p>Disposition:</p> <p>APPEAL DENIED</p> |
| <p>214 TIME CERTAIN: 3:00 PM – Appeal of Sylvan-Highlands Neighborhood Association against Hearings Officer's decision to approve the application of Peter Hoffman to rezone a 1.44 acre site from R20, Single-Dwelling Residential 20,000 to R2, Low Density Multi-Dwelling Residential located at 1530 and 1620 SW 58th Avenue (Hearing; LU 04-048798 ZC)</p> | <p>APPEAL WITHDRAWN</p> |
| <p>REGULAR AGENDA</p> <p>215 Tentatively deny appeal of Sylvan-Highlands Neighborhood Association against Hearings Officer's decision with conditions to approve the application of Douglas and Julia Pollock for a five-lot subdivision for attached housing development at 1750 SW 58th Avenue (Findings; Previous Agenda 135; LU 04-039239 LDS)</p> <p>Motion to adopt the findings, deny the appeal and modify the Hearings Officer's decision to approve the project for a five-lot subdivision subject to the alternative plan that provides access to the site via one driveway off of SW Montgomery: Moved by Commissioner Adams and seconded by Commissioner Saltzman.</p> <p>(Y-5)</p> | <p>REVISED FINDINGS ADOPTED</p> |

At 3:08 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love

March 17, 2005

Clerk of the Council

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

March 16, 2005
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

MARCH 16, 2005 9:30 AM

Potter: Our regular agenda, always open up each wednesday council by asking a question. It's a question that in a number of african villages the adults ask each other. The question is -- how are the children? When they ask that question what they're really saying is how is our village? Because you can judge the health of a village or community by the health of their children and whether they are healthy, whether they're being provided a good education, proper nutrition, medical care, the things that make for a strong adult. And so what we decided to do as a condition of asking that question is to invite experts in. And it just so happens that all the experts are children. Who should know better how are the children than children. Today we have a young woman. Her name is casey ann gerholdt. Casey, could you come on up, please. Casey is a 16-year-old sophomore. Her interests are music, singing, writing poetry, hackysack and politics, which I think is an interesting combination. I want casey ann to tell us about herself first and to give us information that she would like us to be aware of. Casey ann, thank you for being here. I want to introduce our commissioners. This is commissioner erik Sten on the far. This is commissioner dan Saltzman.
*****: Hi.

Potter: And right here, if he was here, would be commissioner sam adams. And commissioner randy leonard. Thank you.

Kaycieannm Gerhold: Ok. I want to start by saying that, tom Potter, I respect you tremendously, and i'm glad that you as mayor are taking the time to actually listen to youth.

Potter: Could you speak up just a little bit?

Gerhold: Yeah.

Potter: Thank you.

Gerhold: I respect you tremendously and i'm glad that you're taking the time to talk to the youth of Portland. While this past year I was cochair at franklin high school, the gay/straight alliance. Throughout the year we've been working on trying to set a more tolerant and safe school environment. In january we met with other franklin groups, a political group in which I also attend, the latino group and the black student union just to name a few. We discussed trying to create a place where we're not just individuals coming together to learn and move on with our lives, but where we are a community, uniting to help each other learn and succeed. We discovered that to do that we needed to first put effort and second start by breaking barriers caused by diversity. now that's a lot easier said than done, because looking around that room of about 40 teachers and students, I knew maybe 10 to 15 people's names, and that's because they were the people that I was in the same groups with and shared similar views with. Just looking around the halls of my high school, I saw barriers set up almost automatically, unspoken system and rule that let no one step outside of their group. It seemed like people didn't reach out to each other, even when they saw each other every day and shared a lot of the same goals. We look for things that are comfortable and familiar to us, and don't really act outside of our boxes for fear of being snubbed basically. Everybody knows somebody from the other side of the tracks, but we're too busy setting ourselves apart instead of focusing on the core issues that we could all try and solve. I believe that by empowering youth and giving them tools they need to recognize these barriers, as well as giving them the support to let their voice be heard, will open up doors of opportunity. If that means

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holding annual conferences with youth from around Portland or even if that means just holding more of the same meetings that we had at franklin, but at different schools with a broader range of students, led by students, I think more young people would get involved. You express holding meetings and possibly opening up a paid internship for one or two youth in our community. I think that this, if possible, would be a great start. Even if it doesn't happen, your support in general would encourage great things. I feel a lot of youth today have the initiative to create change. I talk to people my age every day with visions both alike and different than mine, and would like to see those visions being heard and put into action. So once again, i'm elated that I got the chance to express my passion and share my vision with you. Thank you.

Potter: Thank you, casey ann. You're also on the metropolitan youth commission.

Gerhold: Yes.

Potter: Could you introduce the people that came here with you today.

Gerhold: There's sean right there and emily and joshua todd, and his two children, charity and aaron.

Potter: Metropolitan youth commission is doing a great job.

Gerhold: Multnomah youth commission.

Potter: Excuse me. Multnomah youth commission is doing a great job on that emily won one of our awards recently as a good citizen. Thank you for being here today, casey ann. I wish you the best. I notice that you had politics as an area of interest.

Gerhold: Yeah.

Potter: What do you want to do with that?

Gerhold: I don't know. Anything. Ever since going to the capitol in salem, I got really interested in it, seeing all the representatives and knowing that I could get out there and create change, basically make a society that I want to live in.

Potter: That's a good reason to go into politics. And i'd say the five of us should be keeping our seats warm for this young woman. She's going to be there some day. Thank you so much for being here.

Gerhold: Thank you.

Potter: Council will come to order. Karla, please call the roll. [roll call taken] [gavel pounded]

Potter: Communications. Karla, please read item 187.

Item 187.

Thomas Mullen: Good morning. My name is thomas mullen.

Potter: Sir, you have three minutes.

Mullen: Yeah. I was here to get an update on the report about my appointment. I've been working with the homeless people, trying to work with the homeless people since 1987, when I first came here. I've been here all my life. When I moved back to Oregon here in 1987, trying to put together a homeless shelter, working with all the homeless people here in Oregon. Since then I was working in 1992 with the st. Johns project, and stuff, was trying to develop a housing program, but I keep getting looked over ad pushed aside and stuff and everybody's taking my ideas and property and everything back from me. I'm starting to lose it at this point, where it's getting to the point where it's criminal and stuff. So that's the reason why they told me to file for an appointment. I filed for an appointment, but never heard nothing back. The only thing I heard, I was told over the phone that they spoke with the housing authority and they refused to hire me for some reason, but I never got nothing back in response, the way the office is supposed to handle their business correctly. So i'm still interested in the position for helping the homeless people and also for you to appoint someone to take my legal papers to show exactly where the city's been taking stuff back from me, hindering me from helping the society in Portland, Oregon. I would surely appreciate that, sir.

Potter: Thank you very much, mr. Mullen. Karla, please read item 188. Good morning. Please state your name and –

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Item 188.

Richard L. Koenig: My name is Richard L. Koenig. Good morning, Portland, city council, and mayor. Now you've got the last word from the Oregon department of transportation. The only way for members of the general public to become subject to the motor vehicle laws of this state is for them to choose to title their vehicles using the new Oregon administrative rule number 735.022-0120. If you've taken the normal course and accessed the full text of the rule, you know that ODOT has not demonstrated good faith. The rule requires exactly nothing from the personnel of D.M.V. The rule does not provide for informing a member of the general public about the fact that he or she is not required to title and register their personal use vehicle. The rule says that when a member of the general public fills out the same old application form and pays the same old fee, which went up almost double last year, that the choice has been made to become a regulated motor vehicle, or become regulated as a motor vehicle operator and a regulated motor vehicle. Of course, none of us can be held to a contract that we didn't have enough information to know what we were getting into when we got into it. The city council will know exactly what it's getting into by allowing itself to hide behind the incredible assertions of chief deputy city attorney Harry Auerbach, because I'm going to take the time to tell you. When the law says that motor vehicle operators are granted the privilege, but the general public has the right to use their vehicles on the highway, that means that police officers have no business enforcing the provisions of title 59 of business regulations part two against most of us. That means that when police officers pull most of us over, we are being deprived of the fundamental, unalienable right of locomotion and being subjected literally to highway robbery. You have each received hand-delivered invitations to a meeting with the director of Oregon's police training program, former P.P.B. member John Minnis. He's the husband of the speaker of the house of representatives, whose office has informed you, in writing, because I handed that letter to all of you, that there are no statutes that subject the general public to anything before they can exercise their right to use the highway for vehicles. Which one of you will show up and tell Mr. Minnis that his wife is less than credible tonight? How about sending Harry? You want the address where it is again? It's at the United Church of Christ, the Ainsworth United Church of Christ, 2941 Northeast Ainsworth, 7:30.

Potter: Thank you, Mr. Koenig. Karla, please read the next item.

Item 189.

Potter: Sir, please state your name for the record. You have three minutes.

Paul Phillips: Yes. I'm Paul Phillips, 1212 Southwest Clay, Portland. I have before you a piece of paper. You should have it from the C.D.C. I'll start with the last sentence on the page at the bottom of it. "Dog bites. We're the 12th leading cause of nonfatal injuries for all age groups in the United States." Again, this is from the C.D.C., their website posted on the page. I'll read the three paragraphs entirely. "Angrily, in the United States, 4.7 million people are bitten by dogs. Of these approximately 800,000 people require medical attention. That is each year 1.7% of the United States population is bitten by a dog. And .03% of the United States population seeks medical care for a dog bite -- or for a bite." Second paragraph, "Details are provided on approximately 12 annual deaths from dog attacks and data are provided on dog breeds involved in fatal attacks." The third paragraph, "Data collected from the National Health Survey estimated that there were 585 dog bites requiring medical attention in 1986. Dog bites were the 12th leading cause of nonfatal injuries of all age groups in the United States." Does anybody doubt the validity of this document?

Adams: No.

Phillips: Was this new and current information for you? I tried to find out how many dog -- or how many meter readers in the city of Portland are attacked and bitten each year, and got the total run-around. If you could find that information out and provide it to the general public. My service animal has been attacked three times. And just since February -- or since August 1, 2002, he's

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documented with the united states department of justice and licensed with Multnomah county animal control services.

Phillips: Did you wish to respond to that?

Adams: I would be happy to advocate on your behalf to try to get that information about dog bites and parking attendants and see what we can do about meter readers. Can you leave me your information? Or i'll have someone from my staff come down and meet you.

Potter: All right. Thank you.

Adams: Uh-huh.

Potter: Thank you. Karla, the next item.

Item 190.

Potter: Please state your name.

Charles E. Long: Yes. My name is Charles E. Long. I live at 120 -- 420 northeast Mason Street. Thank you. To observe the second anniversary of the invasion and occupation of Iraq, the Portland State University campus ministry is hosting a teach-in and march beginning at 10:00 a.m. Saturday, March 19, at 63 Southwest Montgomery. Since Portland and Oregon citizens are involved in the Iraq situation, we all should be concerned about the situation that's going on in Iraq. Last Thursday foreign policy expert spoke at the World Affairs Council meeting, and I'd like to quote briefly what he said. "We could create the phenomenon of global terrorism that we claim to be fighting." and he said "our leaders are exaggerating fear, overdramatizing dangers and proclaiming imminent threats for which evidence is lacking. Though top intelligence officials committed a massive failure in concluding that Iraq had weapons of mass destruction before going to war, Bush did not discipline them. So far the response is to hand out medals of freedom. That will not be the historical judgment. But in Iraq the majority of Shiites and populist Kurds can better fight the insurgency if U.S. troops pull out. They would be far more effective at dealing with insurgency than occupiers." Then on the CBS news last evening there was a report that civil war was imminent in Iraq despite the recent elections. So we all should be concerned and take part in this rally if you're interested. Thank you.

Potter: Thank you, sir. Next item, Karla.

Item 191.

Potter: Good morning, sir. Could you please sit down and state your name. You have three minutes. Thank you.

Carlos Jermaine Richard: Thank you, Mayor. My full name for the record is Carlos Jermaine Richard. Again, good morning to you, honorable Mayor, and distinguished City Councilmembers. I'm from Cathedral Praise Ministries, located in Southeast Portland, in the Hawthorne District. Under the former administration with Mayor Vera Katz we started this communication of prayer, but we would come from time to time and pray with you all here in the Council Chambers. Again, it's just a simple prayer. We do pray for the Mayor and the Council and all of government outside of City Hall, but from time to time we will come and during this three-minute communication and just pray with you and offer up a simple prayer on your behalf as you are our leaders in the city. So with that, you, those on the Council, who would not mind, will just join us in a simple prayer. Father, we thank you for this day. This is the day that you have made. Thank you, God, for our Mayor, the leader of our city. Thank you for the Councilmembers, God, who assist this Mayor in the governance, God, and administration of the services provided to the City of Portland. Father, we just ask that you lead the Mayor and Councilmembers, guide them, God, in their everyday decisions, because we know they have a heart to see the citizens of Portland better and well off, not only the adults, God, but as the Mayor said earlier in his statement, we're also concerned about the children. We just ask you, again, God, to look over them and be with them as they administer the services duly entrusted to them by you and the City of Portland. In Jesus' name we pray, Amen. Thank you, Mayor.

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Potter: Thank you, sir. Karla, next item.

Moore: We're up to the consent agenda.

Potter: Ok. We'll take a vote on the consent agenda. Commissioners, any items you want to pull off the consent agenda? Anybody in the audience wish to pull anything off the consent agenda? Karla, please call the roll.

Adams: Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

Potter: Aye. [gavel pounded] we have a time certain, 9:30, item 192. Commissioner Leonard.

Item 192.

Leonard: Thank you, mayor Potter. When I was assigned the bureau of development services two years ago last november, ty and I sat out to make it not the best bureau it could be, but the best building in the united states. People snickered at us at the time when we said that, but that was the - our vision and our mission. I'm here to tell you there's a number of people in the community, including the homebuilders association, who refer to the bureau as the best building department in the united states. I'm pleased and proud of the work they all do. What we've learned is getting a permit in the city of Portland is as expeditious and as good as its weakest link. One of the weak links that we have identified is the -- notwithstanding their efforts to expedite is in the land use services division of the bureau of development services, where due to a lack of funding and understaffing the permits oftentimes get stuck there for a while. We've identified this method of creating more funding, working with our public and private sector partners, to inject more resources into that section in order to staff it to the level that will allow our permitting system to move quicker. So I appreciate all the work everybody's done. This has been before council once in early december. We referred it back to the bureau of development services to do a little more work. They've done that. And I now turn it over to ty.

Ty Kovatch, Interim Director, Bureau of Development Services: Hi. I'm ty kovach, interim director of the bureau of development services. In december the bureau brought forward an ordinance asking the council to grant permission to move forward with this effort to create a fee to fund the land use services section as commissioner leonard mentioned. In that on the other hand it directed the bureau to work closely with its customers, to develop the fee, because they're the ones who are ultimately going to be paying for it. And so as part of that directive, the bureau engaged with its development review advisory committee, which is the stakeholder body that the bureau of development services utilizes, which is made up of its major customers, neighborhood groups, professional organizations, affiliated with the development process. And we engaged in trying to develop a fee that maximized the utility of all the resources that our customers pay and shifted some of the ones that we currently have into a new area with the ultimate goal of having a really limited impact from permit to permit with the addition of this new fee. The way we got there was initially taking a look at the council-driven reserve levels from the past, which as part of this process we reviewed and came to the conclusion that we thought they were higher than they needed to be, and we are asking that the council allow us to reduce those reserve levels, which allows us to use that capacity to then apply towards a new fee. The bureau of development services is largely funded by construction revenues, which by state mandate are only allowed to be used for direct issuance of building permits. And that does not include land use services. So whatever revenues we're coming in on regular permits, we're not allowed to use for any other purposes. Land use services is funded by general fund and land use services fees, which the combination of pressure on the general fund and sliding support over time and the increasing of fees that are, in my opinion, already quite high in the land use services section, we sort of came to a head. And the head was an ongoing \$600,000 shortfall in the land use services division, which has impaired our ability to either add staff to accommodate growing regulations and to fulfill our efforts to achieve the best customer service we can deliver in the bureau of development services. So what this solution amounts to is essentially a redistribution of a chunk of resources that are already coming in via building permit fees towards

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this other purpose. And so just by illustration, this is not an exact number, if today a building permit cost \$10 on may 1 when this goes into effect a building permit costs \$10, but now \$9 goes into the construction fund and \$1 goes into the development services fund, where before all \$10 went into the construction fund. So that \$1 will now be going toward the land use services division to fund the addition of seven new staff and eliminate the \$600,000 shortfall. We feel really good about this solution, not because -- not just because it's creative, but also because I think if 2 1/2 years ago we'd asked our customers to engage in helping us create a new fee, we would have been laughed off the fifth floor of the bureau -- or the 1900 building, and so we're really proud of that. And with that i'd like to turn it over to tom, the homebuilders representative on the development and review advisory committee and the current chair.

*******:** Good morning, mayor Potter, members of the council. I'm here to -- as ty said to --

Potter: Please state your name.

Tom Skaar, Development Review Advisory Committee: I'm sorry. my name is tom skaar. I'm here to represent the development review advisory committee, who our group was tasked with the -- with the charge of working on this fee and figuring out what we thought was the most equitable way of implementing a fee, getting more money into the land use services fund without, if possible, negatively impacting the development and building community. We feel like we've done that. And we offer our full support to this ordinance and the fee that comes along with it with a couple of minor caveats. We feel that this is a good start and it certainly will move the land use services section in the direction we think it needs to go, and help reduce the backlog that exists there now and improve permit processing time, however we see that it could go farther. And that could happen in two ways, one of which is we would request of the council that you -- that you direct staff to find ways to -- to acquire enough additional revenue. Not telling you how to do that, but we feel it's important that it be done to fully fund an additional program outlined in the letter given to each of you which we think would result in increased service and performance for all of the building community. Secondly, the most important thing, is the issue of ever-increasing regulation. We feel that for an awful long time the emphasis of the city has been on additional and ever-more complex regulation and not enough emphasis on taking a look at reviewing the old regulations, determining where conflicts exist, and trust me, there are some, your own staff will tell you that as well, where layer upon layer of code has been -- has been put in place over the years, and after a while there are conflicts between the various layers of code, and those take a lot of time and effort to sort out. All too often new codes and regulations are placed without too much of an eye as to how they're administered. Taken accumulatively they begin to add up. It's gotten to the point where they simply don't have the staff necessary to enforce and administer the code. So we support the increase, or the change in the fee structure, and we're cautiously optimistic that -- that will improve service. We have no reason to believe that it won't, but we know we could end up being back here again in the same boat in a couple of years if there isn't more care given to streamlining the code and perhaps more emphasis placed on that. Appreciate your time.

Potter: Thank you.

Kovatch: Just to clarify on the additional positions that tom mentioned, what that would ultimately fund is a concept that rebecca, manager of the land use services division, has developed that is titled concept of construction, and it's a model we're trying to get to bureauwide which puts the bureau staff at the front end when the development is just an idea, and the staff becomes a partner in the ultimate project rather than one of the places you come after the project's fully developed. It eliminates a lot of back and forth and ultimately saves everybody a lot of time and money. It's just something that's hard to get off the ground. So that's what the three positions would go for. Also, I forgot to mention that we have provided you with a sheet up here that looks something like this, which demonstrates what the impact of the new fee will be over the next five years as we project it on typical projects. You'll see that a commercial alteration beginning on july 1 of 2005-2006 goes

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up about \$16 on a typical permit. And we've tried to come up with really typical examples of how it impacts over the next course of a few years. You'll see in the schedule of what the projected fee increases would have to be to cover our needs over our five-year plan. You'll see that the building fee, which is the largest portion of what our customers pay, is zero percent for the next five years as we project it. And the development services fee, which we're talking about right now, is 4% to 5% over the next five years. To put that in context, the building permit fee being \$10 million to \$13 million in revenue, any percentage increase is significant. The total revenue it will generate is just over a million dollars. think of the increase as \$40,000 to \$50,000 spread over thousands of permits, better illustrated by the increases which you can see are relatively nominal if you look through the typical projects we've provided. So if you have any questions, we're here to answer them. I know there's a few people who would like to come up and testify on this as well.

Potter: Any questions from the commissioners?

Adams: How far are you behind? What's the best way to describe in numerical terms?

Rebecca Esau, Bureau of Development Services: Rebecca esau. We currently have a backlog in the planning and zoning section, primarily with commercial permits and probably a backlog of approximately two weeks at this point. We have a huge backlog with land divisions, final plats, and getting calls regularly on "we're missing our deadlines," and we're not able to keep up with the code mandated deadlines and our own goals on performance. Weeks behind on final plats and other things.

Adams: More than two weeks?

*******:** More than two weeks.

Kovatch: And with the sort of efforts we've undertaken as a bureau to be as responsive as we possibly can to customers, given the stack of whatever the number of reviews of typical staff member in the land use services division may have to do, they're not able to spend appropriate amount of time on each, to both catch any conflicts, what the proposal may have with the code, and maybe spend more time finding solutions if those -- those things are identified. So that's another maybe less tangible piece of what the impact of this will ultimately be. I think it benefits both the neighborhood interests, who have an interest making sure the code is upheld on a consistent and clear basis and the development interests who have an interest in it not taking forever to get a permit.

Adams: You had more?

Esau: Yeah. A typical number of land use reviews for any planner would be around 12 to 15. For them to be able to provide good proactive service and quick turnaround with their applicants, in coordinating with the service bureaus, currently the land division success has 30 to 40 land use reviews at anytime. That severely impacts their ability to provide service.

Adams: Way too much. And to pick up on the home builder's suggestion of a friendly challenge to us to get more staff, are there other people in the city who have expertise that could be lent to this effort, to your division, to sort of help you -- dig you out of the hole so that on a short-term, one-time basis, on loan, so that the new efforts would go toward, you know, really good customer service from the get-go?

Esau: The majority of planners in the city are in the bureau of planning, and there's approximately three or four planners there who have recently worked at b.d.s. And could step in and do the work quickly without a lot of training. For the other planners there, it would take a few months of training to get them up to speed, to a productive level.

Adams: Do you have any thoughts as the interim bureau manager of whether a loan of employees of such a nature would be beneficial?

Kovatch: It would certainly be beneficial to the bureau of development services and its customers. However, it is the will of the council whether that balance is with the impact it may have in the bureau of planning.

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Adams: Do you have a sense of what those particular individuals, whose expertise applies here, what they're doing right now?

Esau: Regulatory improvement work, which is also very important to us.

Adams: Ok, thanks.

Saltzman: So the development services fee is a new fee altogether. Is that correct? It's not bound by the restrictions of the building permit fees, which must -- must by state law be used for certain purposes?

Kovatch: Correct.

Saltzman: And go strictly towards increasing the funding for land use services? Because if we made land use service fees totally self-sufficient, they would go -- they would be too high or prohibitively high, is that the --

Kovatch: Yes. A number of the fees in the land use services division are really, really quite high. And we've really tried to make an effort as a bureau, over time, to keep the total sum of our fees as low as they possibly can, and where we started with the land use services division was a lot of really high fees, because the work that goes into doing all those reviews is -- is a real time -- it takes a lot of time to go through all the processes that need to be done and all the paperwork that need to be done, so consequently the fees associated with them have been high. The council some time back had said the balance between general fund support of the program and fee support of the program would be 65% in fees and 35% in general fund. And over time, do pressure in the general fund, priority spending in the general fund, has been diverted elsewhere. And these --

Saltzman: Will this new fee totally back out general fund support for land use services?

Kovatch: Not at this time, it's not projected.

Saltzman: But over time it --

Kovatch: Theoretically, depending on what the volume of permits may or may not be. It was -- it was built to satisfy the status quo, which is that right now about 17% of the program, if i'm not mistaken, is funded by general fund. The rest is funded by fees. And then there's a \$600,000 gap between there. So this fee fills the \$600,000 gap and adds seven new f.t.e.

Saltzman: So it still keeps that 17% general fund?

Kovatch: It assumes that the 17% general fund remains.

Saltzman: Council adopt as a policy the 65%, 35%?

Kovatch: I believe that's accurate.

Denise Kleim, Bureau of Development Services: Well, it was adopted as a policy through an ordinance, however it has not been actually followed. I think in enacting this fee, that policy really becomes moot. And the amount of general fund is just -- has been increasing by the cost-of-living increase over time. It's about \$1.2 million.

Saltzman: Shouldn't we at some point, at least formally, to change the ordinance to reflect the new policies we're putting forward?

Kleim: Yes, that would be good.

Saltzman: So will you bring that back to us to change?

Kleim: We can do that.

Saltzman: Ok.

Esau: It is an important policy discussion to have, as to who should be footing the bill for these services. Should it be the developers 100% or should we consider the benefit to the community and provide some --

Saltzman: Right. I mean, that's the policy discussion I remember we had, and I assumed it was formalized in some sort of an ordinance. If we're now either not choosing to adhere to that policy and in fact taking an action today that changes that policy, it seems to me we should at least reflect - - make sure our ordinance reflect that, this new policy shift.

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Potter: I also had a question, ty. Which is the average length of time it takes to apply for and receive a permit? And how will it shorten that and how long will it be?

Kovatch: I couldn't off the top of my head rattle off the exact amounts of time from permit to permit, but as -- just in my experience from the point 2 1/2 years ago where commissioner Leonard took over the bureau, as chief of staff I was often the place where lots of the complaints from our customers came. That's how we learned about where the problems were. And so over time what we identified was the inspection sections and the plans examiners, which are the building side, they do fire and life safety and structural and mechanical and electrical, we undertook an effort to fully staff those functions, which made our turnaround times a lot more consistent than they had been in the past. We're still receiving news from our customers that the service delivery isn't meeting their timeline needs, is in the land use services division. So we're trying to, with this effort, fully support all the divisions we have under our responsibility to make our turnaround times as predictable and consistent as possible. I'd like to give you a clear answer about what it is from permit to permit, but there's so many different varieties of permit, a new single family house. We have a program, for instance, in new single family housing, where we can get you a permit in 10 days. That's the fast track program, which we've developed over the past approximately year. And then there's other tracks, depending on what the customer's needs are. And commercial projects, depending on the need and size of the customer, we try to adapt to that. Some customers need them really quickly. Some customers have built in a longer timeline. It's much more difficult to give a clear answer, but this effort will make our total process able to respond more quickly and more predictably to our customers' needs, which is our -- our stated goal.

Potter: I think that's a very good assumption. I'm just wondering what the numbers would reflect.

Kovatch: We can provide you with those.

Potter: It would be helpful to provide it to the entire council.

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

Potter: Yes. Thank you. Other questions? Thank you. Karla, we have folks to testify on this?

Moore: We do. Come up three at a time.

Potter: Thank you for being here. You each have three minutes. Please state your name for the record as you speak.

Robyn Williams, Portland Business Alliance: Commissioners, mayor, my name is robin williams. I'm representing the Portland business alliance. I participate in the alliance's development public space and housing subcommittee where ty and denise presented this proposal for the development services fee. The alliance appreciates the bureau reviewing its financial situation and developing what we see as a creative and cooperative solution to address the problem.

We understand the need to fund this in order to provide timely services, and we agree that the bureau's reserves should be reduced. Additionally, the move within the bureau to shift to a -- [technical difficulties] with that in mind we support the request that the council consider the following. First to mitigate the increasingly complex and voluminous codes bureaus involved in the development process should balance efforts between streamlining and improving existing code and creating new codes and regulations. While there are initiatives directed toward streamlining the code, these efforts have simply not kept pace with the creation of new regulations. Code improvement must be an ongoing pursuit. Secondly, council shouldn't approve without appropriate funding or staffing to implement. The model process for impact analysis, which should be informed by the bureau of development services, should be a valuable tool in the council's decision making process. If a regulation is adopted to satisfy an important public goal, then there should also be public resources in place to attain that goal. This, too, will mitigate the current imbalance between code development and implementation resources that drives up the cost of doing business. I thank you for the opportunity to comment.

Potter: Thank you.

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Cindy Catto, Associated General Contractors: Mayor Potter and members of the council, for the record i'm cindy cato from associated general contractors. I've brought with me today a letter from jeff piralla, our member representative on the development review advisory committee. He unfortunately was not able to be here today because of a business conflict, but asked me to bring his letter and to summarize the statements that he has in that letter for the record. A.g.c. Supports the ordinance creating the new development services fee so that the land use services division can be staffed to a level that will eliminate the current backlog and get them back into reasonable turnaround times. It's important, however, to a.g.c. that the council seriously commit to setting a different tone than we've experienced in the past when we've been before you and been asked to support fee increases. Which we've done in the past. The recommendations to streamlining regulations in all bureaus affecting the development review process and using the model process for impact assessment on all new regulations that come before you are not made lightly. This is a band-aid in front of you today. We will be back here with the need for more money if the -- if the code in this city continues to propagate as it has geometrically over the last 10 years. A.g.c. would also encourage council to move the code improvement and regulatory streamlining functions within the planning bureau from annual onetime funding to ongoing funding until their task is complete. There are still many code inconsistencies that create unnecessary confusion and delay, not only for customers, but for the staff here at the city who need to implement them. Finally, it is important to note that the new development services fee does not entirely solve the land use services division staffing need. We encourage the council to find funding for the additional three positions that have been requested from other sources. These are important positions to medium-sized developments that come before the city, because the concept to construction program would give an advocate within the system early on. We now have advocacy for small projects and have advocacy for large projects, but that great middle ground, that great middle class, is not getting the same level of service as the small and large. Adding three more staff we believe ought to be funded out of the general fund, would do that. In conclusion, a.g.c. continues to be assisting the city with its goal of improving the entire development review process. We'll be watching how things go between now and april 1, 2007, which is the recommended time that we -- that the drac come back with a recommendation to the council. Thank you for listening to me today.

Potter: Thank you.

Mark Sieber: My name is mark sieber, 2939 northwest montar court. I serve on the development review advisory committee as a private individual in the slot reserved for people with community interests. My role on that committee has been basically twofold in terms of the things that I bring to it on a regular basis. One is a reminder of the protective missions of the various bureaus that work with b.d.s. to do, you know, the different programs, and the other is a very particular interest in having sound organizational structure. I think that this particular proposal does both. Land use services is very important to the community in terms of getting the implementation of long-term policy in the particular, and I think that this work towards that. I'd also like to briefly address the concept of how we look at regulatory reform. Again, I would always emphasize the protective nature of the different services and the different bureaus going into how we look at, quote, unquote, streamlining regulation. One of the pieces that's been missing is I would say a consistent set of procedures to explore whether the code is actually meeting its intent. There aren't later check-in points, whether it's a year or two years, depending on the size and scope of the particular land use code and regulatory code that come back to see if we're really meeting the regulatory intent. As part of that package, I would like to see that sort of thing explored further.

Adams: Amen.

Potter: Thank you very much. Thank you for being here. State your name and you have three minutes.

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Thomasina Gabriele: Thank you, mayor Potter. My name is thomasina gabriele. 2424 northwest northrup. I serve on the development review advisory committee primarily in the capacity of representing the interest of the institutional facilities coalition, which is the five major healthcare institutions serving the Portland area, as well as p.s.u., p.c.c., and lewis and clark. I'm here as additional supporter of this ordinance that's in front of you today. There are some particular messages that the coalition wanted me to be sure to add to the discussion. One is, is they wanted to let you know that they feel that the land use staff really does very good work, and that they are very committed in doing that work. They also feel that the city policies and planning -- planning regulations, that that staff is implementing, is very important for the quality of life in the city and for actually them being able to have a good city to operate in. That said, that's really why they're willing to support this fee restructuring. We understand that in the out years there will be increases in this fee, as well as increases in the building permit fee. As institutions that are conditional use in all zones in the city, they are ones that have been paying the additional land use services fee. Just an example, I believe one or two years ago just the increase in one of the fees that they all use, the conditional use master plan, went up about 12% in one year. So it was with some reluctance to agree, yes, we really need to have the staff and we really need to have these policies, and we really joined the other voices at the table saying "let's do this and have it make a difference in the next two years." the way that can happen is we certainly want to have the three extra positions funded. B.d.s. is developing a very good reputation of creating customer-friendly innovative programs that make sense to people, and we think this concept to construction will do that. And we're really inviting the city council to take advantage of this two years and see it as an opportunity, as you're talking about the strategic plan for the city, to really set a direction that would help all of us understand what policies and planning regulation do we really need, and for what purpose. And that would also then help when we come before you and you're looking at new regulations, you'd have some compass to say is it really the best thing to do, to set this new regulation, and are we already doing this, or can we do it in a more effective way. Thank you very much.

Potter: Thank you.

Moore: That's all who signed up.

Potter: Is there anyone who didn't sign up who wants to testify on this matter? Does council have any questions?

Adams: If I could just make a quick comment, since we're not voting on this today, right? So you folks might not be around next time. I just want to laud the leadership of commissioner leonard and the work of ty and the management team at the bureau of development service, but I also want to put a special underlined thank you to the drac. Many members have served for a number of years, and that institutional memory of previous changes serves the overall effort very well, and this is a great proposal in front of us. I have a standard practice that i'm going to fight fee and tax increases, one of the exceptions is when there's adequate support from those people that are going to be most impacted by the fee or tax, and that's clearly demonstrated today. So that allows me to support this. And I appreciate the friendly challenge to try to come up with some matching resources. We'll see what we can do.

Potter: Does council have any other comments? Ok. This moves on to a second reading. Item 193.

Item 193.

Andrew Aebi, Local Improvement District Administrator: Good morning, mayor Potter, and commissioners. Andrew aebi, local improvement district administrator. This presentation will be very brief. Karla, could we switch to the presentation? This project would improve northeast 135th avenue from whitaker way to prescott court and the remaining unimproved portion of northeast prescott court and connect pavement to pavement. We've received petitions from owners of four of the eight properties in the l.i.d. representing 26.5% of the estimated cost of the project. We have

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waiver support from an additional two properties in the l.i.d. representing 54% of the estimated cost of the project, which brings total project support to over 80%. Here's a picture of the south end of the project in front of the public storage property. You can there isn't much curb appeal there. Here's a picture of the north end of the project, looking north to Whitaker way. I've been on a lot of unimproved streets since my tenure with the city, but these are some of the biggest potholes I've seen anywhere in the city. That's all for the presentation. The resolution before you would initiate l.i.d. formation proceedings. Council would actually form to vote -- vote to form the l.i.d. next month if you approve it today. The recommendation is based on several factors. First the condition of the street is quite poor. Second, a meeting was held with the property owners late last year and a strong majority of those who attended indicated their support for improving the street through their petition support. And then third, I heard some small business owners who petitioned in favor of this project, that this street is not a good place for them to do business or for their customers to do business, or for their small businesses to grow and prosper. So therefore my recommendation to council is that council move forward with this l.i.d. If council approves this resolution and the formation ordinance next month, this project would be the first improvement of a dirt and gravel street in outer northeast Portland in over a decade. If there are no questions by council, I will turn it over to property owner testimony. Thank you.

Potter: Those pictures you described as potholes, they look like small lakes actually.

Aebi: Yeah. What's really remarkable, Mayor Potter, is these pictures were taken about six to eight weeks ago in the midst of the dry spell we've had this spring. So you can imagine what they would look like if we were having a normal rainy season.

Potter: Wow. Thank you. Thank you for being here. When you testify, please state your name and you each have three minutes.

Jenny Armstrong: I'm Jenny Armstrong. I'm here on behalf of public storage and the concern that I'd like to bring forth to city council at this particular point is that this total cost in meeting with Andrew and discussing some of the options and opportunities that the city has to improve upon this particular street is that public storage does not utilize any of the street that the pictures that were shown in the presentation, and that the cost of the project, 47% of the cost, would then be transmitted to public storage. So as I understand it, the total amount of the project would be \$700,000, with public storage bearing the burden of \$362,000, with getting no -- no way to allow us to gain those revenues back in order to pay the cost that the city is asking us to put forward. So I'm here on behalf of that, to not support the project as our customers don't use the street, we don't use the street, and obviously with concerns of the other people that petition forth for it, you know, of course they would vote yes, because we're bearing 47% of the cost. So having said that, the concern that I'd like to bring forth, or a possible solution, would be that public storage would then be allowed to have 47% of the vote to -- or express nonsupport for that. So in consideration of that. Thank you.

Potter: Thank you.

Doug Shipman: My name is Doug Shipman. I have a small business there. I also have a second piece of property there that I lease. It's industrial piece. In an ideal world it would be nice to have the city come in there and pave it, but I think we've realized that they don't have the funds, so we'll have to get it done. I sometimes chuckle at the number of customers that come in to my shop. I'm mechanical repair. I do industrial and other. The number of them that come in and just laugh and make comments about how hard it is to come to -- to access my facility. It needs to be done. It's been nothing but getting worse over the past couple years. I've having a difficult time getting long-term leases on the one piece of property because of the condition of the road. You know, I feel for public storage picking up the large cost of it. I have two pieces of property, and my cost will be close to \$100,000. It's certainly nothing I want to do, but it's something that has to be done and needs to be done. Thank you.

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Potter: Thank you.

Matt Kaartinen: My name is matt kaartinen. I own a machine shop on 135th. I've been there about 15 years. The last few years with the increase in improvements, or additions in businesses, the street condition has really deteriorated. I only have about 50 feet of frontage there, and even getting into my space creates a major amount of difficulty and I get a lot of complaints from customers, and also delivery people. I have a hard time getting my forklift to get materials and finish projects out the door. So definitely need to do something about that street.

Potter: Thank you all. Karla, are there others?

Moore: Two more.

Potter: Thank you for being here. When you testify, please state your name for the record. You have three minutes each.

Rick Blomdahl: My name is rick blomdahl, property owner, landlord, and business owner on 135th. It is a very important issue to me on this road. My customers and the delivery drivers. You know, i'd say at least 50% of my customers, which are all new customers, I don't have a whole lot of repeat customers coming in. What I do is metal handrail and fence. And so customers will come in and decide what they want. And they usually don't ever come. So it's mainly new customers. And I don't know, but i'd be willing to bet there's been some that have come in -- or wanted to come in off of whitaker way, and i'm not kidding, it looks like a lake, it is like a lake, and i'm sure some of them have just turned around and drove away, because they won't drive through it. I mean, I don't like driving through it, and i've got a pickup truck. I go the other way all the time. In the summertime, it's like a silty dust. Every time a car goes by, you almost need a respirator to breathe. When the car goes by or the wind blows. The wintertime, the water comes in off the road and into my property. The silt and the mud, and goes down into my storm sewer, which, I don't know if that's real good in the environment, the columbia corridor area there. I know it's going to be expensive, but I don't think it's going to get any cheaper down the road. It needs to be done. And I invite, you know, all of you guys to drive down there before you give a no vote on this and see what you think of it. Stop by my business and just take a look at it. Thank you.

Potter: Thank you.

Jeff Cross: Good morning. My name is jeff cross. My business is j.d. cross enterprises. The main thrust of that business is the final trim and lighting on some very expensive emergency vehicles. I also build the parts and accessories and ship them all over the country. I'd like to think I am -- my business is the most impacted by this road. Three Oregon-based dealers of this equipment deliver those vehicles to my shop, and it's the last leg of construction before delivery to the end user. And those vehicles are very expensive. They're clean when they come to my location. And they're showing a lot of disgust. They expect to pick that vehicle up, in many cases go on and deliver it to the end user. To find it has to go back to their location for cleanup. Second, one of my suppliers -- all of my suppliers deliver tractor-trailer. Their rigs are too long to turn around and take the good way out, so they have to continue down 135th. And one of them is even suggesting a surcharge on my deliveries, because they just have to clean their vehicles up at the end of the day. It's a muddy mess. Third point i'd like to make is the self-storage unit, their entrance is on paved prescott court. I would say the frequency of their auctions are about once a month, and they're publicly advertised, and a lot of people turn out for them of the and I would say that there is probably 40 to 50 vehicles show up for those auctions. They do not want to park on the shoulder of the road and be in the wet -- in the mud holes, so they tend to park toward the center of the street. And in many cases you can't get the trucks down the road. Now that's just a once-a-month problem, but it is a problem, but the mess of vehicles in my business is a tremendous problem for me. Thank you.

Potter: Thank you very much.

Moore: That's all who signed up.

Potter: Can we have the l.i.d. manager come back up, please.

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Aebi: Good morning again. Andrew aebi, l.i.d. administrator. I just wanted to respond to a few of the points that public storage raised. First of all, public storage made a business decision when they developed their property to enter into a deed restriction on their property in which they would be counted in favor of street improvements in the future if an l.i.d. Were formed, which was of course what we're doing today. I've handed out copies of those deed restrictions, and they clearly state public storage's agreement to participate in the improvements of both 135th avenue and also prescott court. Also, public storage has a gate mid block on 135th, which is primarily for emergency access. If council approves this project, they will be building a driveway connection so that they have that emergency access mid block in their -- on their property. I'd also like to put these costs into context. Public storage, according to the information they gave me, has 408 rental units on their property. If they were to finance this assessment over 20 years based on the most current bonding rates, that works out to about \$7 per month per storage unit for the street improvement. The other thing that i'd like to point out is the assessment methodology being recommended to council is on a footage basis, but the effective rate for public storage per-square-foot is \$2.55, less than the \$2.64 rate that you approved for the southwest texas l.i.d. Here two weeks ago. So it's all relative. As I mentioned, two weeks ago we have other l.i.d.'s where property owners are being asked to pay from \$8 to \$10 a square foot. So that's all the information I have with respect to public storage. If council has any other questions, i'll be happy to address them.

Potter: I have a question. How does the city compute the cost of improving that street?

Aebi: In terms of apportioning the assessments or --

Potter: The total cost for it. How does the total cost come about?

Aebi: Mayor Potter, one of the things we changed two years ago when we rewrote title 17 was property owners were telling us that they a full accounting of the project costs up front. What we used to have, quite frankly, were some optimistic estimates that didn't always include things like contingencies. We've added 25% contingency on that. And the philosophy that i've tried to follow in my 3 1/2 years with the city is to fully disclose all the costs to the property owners and build that into the estimate so there's no prices at the end -- surprises at the end of the project. We have a very good track record without having to ask the property owners the contingency. We would only ask the property owners the actual cost of building the street. Only actual costs.

Potter: Is that \$700,000 for the street?

Aebi: The total estimate is \$955,000, of which the office of transportation is absorbing overhead costs. So the cost to the property owners is about \$724,000, but that includes that 25% contingency.

Potter: Is that work done by the city of Portland?

Aebi: The city of Portland does the design work, but we will bid this project out to the private sector and will award it to the lowest responsive bid. One of the things we do when we come up with our estimates is we try to base it on kind of the higher range of the bids we've seen in the last few years, because anytime you bid one of these projects out you'll see low bids, see high bids. What we don't want to do is always base our estimate on the low bid and then that low bidder doesn't come and bid the next project, then, you know, we're stuck with an estimate that was too low.

Saltzman: Is there anything being done with the street with respect to stormwater runoff, other than traditional --

Aebi: Yes. They will be providing stormwater drainage for the street. We don't start the design work until and unless council approves the l.i.d., but we will be looking -- we will certainly be providing stormwater drainage for the street. One of the property owners commented to me that he was seeing a lot of the stormwater runoff from the street now run into his private drain, which eventually winds up in the columbia slough. So one of the things we will be doing is channeling all

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that stormwater, so that it's properly filtered and disposed of, and not being disposed of on private property or going untreated into the columbia slough.

Potter: Perhaps a follow-up on that. As you've developed the streets, is there any effort to look at how to dispose of stormwater on site, such as bioswales and other means?

Aebi: Yes. Actually the last several l.i.d.'s we've brought to council have utilized swales for stormwater drainage. That certainly would be under consideration here, although there is existing stormwater drainage, to my knowledge, on the abutting street. When we go out and do the survey, we will inventory what stormwater disposal is available and swales will certainly be under consideration here.

Potter: They appear to have natural swales now, but no streets. I suppose that will be a distinct improvement. [laughter] so I just want to be clear, though. We're giving this to the folks at cost to the city. We're not taking anything out, other than that 25%, but I assume if we don't use that, is that given back?

Aebi: In most cases we don't need to use it. So when we bring a final assessment ordinance to you probably in about two years, we will only be asking the property owners to pay the actual cost of the l.i.d. So, for example, if we save a lot of money on this project, because public storage has the largest proportion of the assessment, they also would get the largest proportion of the cost savings if we come in under budget.

Leonard: I just wanted to add, and this isn't a criticism of andrew's program, but he and I have talked about this, in fact last time you were here I alluded to lents, because this is a -- this is beyond this particular project. This is a huge issue, particularly in southwest and outer east Portland. I just don't think we're going to get there with the current program of paving streets. So beyond the issue of making it more easily accessible for residents, it's a public safety issue, because if you have a fire, medical emergency, or police emergency, those vehicles, particularly the larger vehicles, at times find it nearly impossible to navigate these streets. I just -- it's something i've just thought about, but I think we need to, up, look at -- you mentioned minneapolis, I believe, when we were talking before and the program they use to pave the same kind of streets, which was a different kind of a mechanism than what we use here. And I just think we need to start thinking about that. And I see -- I guess I can envision some cost savings if we were to have a -- kind of a massive project citywide to pave streets, that could reduce the costs, for instance, for people like this, if we were doing it on a broader scale and had a contractor that was charged with doing that. So i'm going to keep throwing this out there till we come up with something.

Aebi: A lot of l.i.d.'s in the works, commissioner. So the good news is those 65 miles of dirt and gravel streets are going to be coming down here when we update that in two or four years. That number's going to be shrinking.

Leonard: But i'm sensitive it's onerous to low-income families and small businesses. I don't have a solution in mind, but i'm interested in this, in the model you talked about in minnesota.

Aebi: Which is why I was so very appreciative of all the small businesses on this project in favor of petitioning for the l.i.d. I shouldn't say all of them, but all those that petitioned were all small businesses. Thank you.

Potter: I agree with you, commissioner. We've got to figure something out for the neighborhood that can't afford \$978,000 street. And I know there was one out in southeast that decided to pave their own street. And I think we need to figure something out that's going to work for all of our communities. If the city can't pave it, then what can we do to assist communities in a way? I think the l.i.d. is one way. I understand the l.i.d., that's also tax deductible?

Aebi: Well, legally I can't provide tax advice on behalf of the city, but one of the things the l.i.d. program started doing shortly after I came to work for the city is we had a lot of people deducting their l.i.d. interest. So to make it easier for them I worked with the auditor's office so that the auditor's office sends out an interest statement at the end of the year so those folks can substantiate

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the amount of interest they paid, you know, if they talked to their tax advisor, but I haven't heard of anybody having a problem deducting their l.i.d. interest.

Potter: So a yes?

Aebi: I told the city attorney I would not say on the record it's tax deductible.

Adams: Could you provide us with a forecast of l.i.d. street issues coming before the council in the next year and a half?

Aebi: Just kind of a general discussion of issues?

Adams: What's in the pipeline.

Aebi: Projects in the pipeline?

Adams: Projects in the pipeline.

Potter: Following up on commission leonard's point, looking at how other cities handle this, particularly with low-income communities. I'm concerned that a lot of outer east Portland, this is an awfully expensive remedy for those folks. I don't know what the solutions are, but I guess doing some survey of -- nationally how other cities handle it would at least point us in the direction.

Adams: We also in team b, part of the budget process, asked for and received an analysis of where the unimproved streets were, and also the backlog of maintenance, and it's interesting to see the map of where it's at. Linnton as a neighborhood had the highest concentration of unimproved streets, and there are pockets all over the city, obviously in southwest and east Portland. So that's why i'm curious where your l.i.d. efforts are and how that matches up. And then in terms of alternatives in terms of the standards we use to define what is a paved street and your suggestions on creative alternatives for financing are absolutely in the right direction.

Aebi: The short answer is right now we do l.i.d.'s on a response-driven basis. Where there's support to do a project, we do it. It's not a planned process with the main exception of lents, where we have urban renewal funding. So for the most part it's a response-driven process.

Potter: Any other questions? Is there anyone who didn't sign up who wishes to testify on this matter? Is the council ready to take a vote? Karla, please call the roll.

Adams: Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

Potter: Aye. [gavel pounded] item 194. This will be continued.

Item 194.

Adams: I want to move it, because of the uncertainty of the schedule with the budget and everything else, I just want to move it back to my office, and then we'll refile so we don't have to keep continuing it.

Potter: Ok.

Adams: I don't know how to do that.

Moore: Let me read the title.

Adams: We have to take a vote or just do it?

Leonard: You can just do it.

Potter: Ok, let's do it. [gavel pounded] Karla, item 206 is the next one.

Moore: Correct.

Item 206.

Potter: This was heard last week. We asked human resources asked me to meet to discuss it, to see if they could come up with some proposal. Staff, would you like to start.

Ed Rutledge, Labor Employees Relation Manager: Yes, sir. My name is ed rutledge, labor employees relation manager. With me is david reese and james hester. We have had a conversation on this. We were able to meet for a couple of hours yesterday and then also james and I had another telephone conversation. One issue raised was creating a new classification, and I think where we are as of this morning is that, as james put it best, we're going to agree to disagree as to whether this should be a new classification or a currently existing classification. The other issue was we worked out, we had a discussion about some of the representational issues and we kind of worked that out.

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Everybody understands that there's representational procedures available under the o.a.r.'s, chapter 25, division 25, I believe, on representational issues. I think that -- I don't want to -- James probably needs to speak, but I believe that we're prepared to move ahead. James?

James Hester, Council Representative, AFSCME Local 139: James hester, council representative, afscme local 139. There's no way to meet the standards of your first guest speakers today. That was wonderful to hear that. But to address this issue, i'm here today to extend my appreciation to the council. We came for council last week to remove this from the consent agenda.

We had a concern whether this should be a represented or nonrepresented position, and I appreciate, mayor Potter, your willingness to direct that back to h.r. and to have that discussion. Those are discussions that really have not occurred for the last seven or eight years between the public employee unions and the city and h.r. in particular, at least from afscme's standpoint. I appreciate commissioner leonard's questions of h.r. and all the parties concerned. We did meet as directed, as ed referenced my comments. At this point in time we're going to agree to disagree. Afscme's position is we clearly believe that this should be a represented position from the get-go, even if the position may differ from the crime prevention administrator's position, it's very closely related in the family, and if not a second cousin, at least a first cousin, maybe even a brother or sister of that job classification, but we do appreciate, the union does appreciate, the council's support of us having that dialogue over this past week, and again I will leave it at that, that we're also hoping to pursue other avenues, or the union will pursue other avenues to make this a represented position, as commissioner leonard pointed out, there are other means to do that. But I believe also one of the healthy things that came out of this discussion, and i'll pat ed on the back here is that we had some discussion about how we may be able to more efficiently address these issues in the future. So we're going to continue those talks at a later date.

Potter: Good. Questions from the council? Thank you. Is anyone signed up to testify?

Moore: I didn't have a sign-up sheet.

Potter: Is there anyone here who wishes to testify on this matter? Does council have any questions? Any questions? ok. Karla, please call the roll.

Adams: No.

Leonard: Well, I -- you know, the point I was trying to make last week was -- you know, it's something i've tried to bring here since arriving, and that is forcing people to sit down and talk. And I don't accept often when people sit down and talk that they tell me they can't get to a resolution. Sometimes the tools available for both sides to use to settle disputes are overly relied upon and cost a lot of money and create a lot of hard feelings in the end. As a result, we try really hard in the bureaus that i've had to make both sides sit down and talk and do not accept when they can't come to an agreement. I mean, i'm just not a person that believes reasonable people can't get to a place where they can find a solution. So this is -- I appreciate what James said, and I will support the ordinance, but I think we need to try harder to try to figure out solutions and not so much fall back to traditional roles. Aye.

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

Potter: Aye. [gavel pounded]

Harry Auerbach, Chief Deputy City Attorney: It's an emergency ordinance, and with a nay vote the ordinance does not pass.

Potter: So now do we do?

Auerbach: Well, now it is not passed.

Leonard: Goes to next week?

Auerbach: You can either refile it as a nonemergency ordinance or if commissioner Adams will indulge you can reconsider it and remove the emergency clause.

Potter: Commissioner Adams, would you consider removing the emergency clause?

Adams: Yes.

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Sten: Second the motion to reconsider.

Leonard: To be real technical, he can't make that motion, because he wasn't on the prevailing side.

Auerbach: He's the only one on the prevailing side.

Leonard: That's true, because he won, yeah.

Potter: Ok, so do we vote on the --

Moore: Ordinance as a nonemergency, uh-huh.

Potter: Ok. Karla --

Auerbach: You have to have an amendment to remove the emergency clause. Then it would come back next week for a second reading.

Sten: I would move that we remove the emergency clause from item 206.

Leonard: Second.

Adams: Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

Potter: Aye. [gavel pounded]

Auerbach: Then the item as amended will come back for a second reading.

Potter: Ok, come back for a second reading. Karla, please read item 207.

Item 207.

Potter: Staff.

Sam Irving: Good morning, mr. Mayor and commissioners. My name is sam irving, the transportation maintenance bureau director for the city of Portland. I'm pleased to share with you today that the city's first wind turbine is currently being constructed as sunderland yard. There's a 10-kilowatt wind emergency system. This wind system is a showcase project and underscores the city's commitment to sustainability. It also moves us closer to the city's goal of reducing our emissions of greenhouse gases. Once operational, this system is estimated to generate approximately 12,746 kilowatts -- kilowatt hours of electricity per year. The electricity generated by the turbine will be used to power the onsite house at sunderland yard. We primarily use this house for office and meeting spaces. Any excess electricity will be sold back to pacificorp. We could not have accomplished this without the partnership between -- and amongst -- my colleagues here, jan shafer from the energy trust of Oregon, and dave tooze from the office of sustainability -- sustainable development. Excuse me. We look forward to inviting you all out to visit the site and engage with us in a ribbon-cutting this summer. Again, in return for paying the \$36,117 toward the cost of the wind turbine, the energy trust will receive the city's green tax, or the environmental benefits associated with this renewable energy source. Also, I would like to acknowledge my staff, marty glick, responsible for our pollution prevention program, and tom oman, basically the coordinator, and worked closely with the energy trust of Oregon to facilitate the erection of this tower. I'm real proud of the work that they've done. I'll defer to jan shafer with the energy trust of Oregon.

Jan Schaffer, Energy Trust of Oregon: Hello, i'm jan schaffer, energy trust of Oregon, and representing energy trust we're proud and excited to help the city build its first wind turbine. This is our second first, working with o.s.d. Fire stations numbers 25 and 16 have solar panels on them generating electricity now. The first buildings in the city to have solar energy. Now we're going to have wind. We're also pleased to be a contributor to the city's sustainable investment fund, and we were in front of you a couple weeks ago about that. Wind is a clean, readily available resource in much of Oregon. If you go out to eastern Oregon, you'll see hundreds of large wind turbines generating power for the utilities, erecting small turbines to serve local needs is a new thing. Energy trust is designing a program to support community wind projects, and the sunderland yard project is the first of these. We're looking for it as an example for many more applications around the state in the years to come three other important partners that deserve credit, but weren't here today to get it. They include u.s. Bank, the Oregon department of energy, and pacificorp.

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Pacificorp for providing the metering system allowing the power to go back in the grid when it's not needed at the yard. And u.s. Bank for contributing upfront money for the project through the state's energy tax credit pass-through program. And we thank everybody at the city that helped back this happen. People sitting here. And you guys up there. Especially commissioner Saltzman, who I believe helped push this project through when it got stuck in places in time. So thank you very much.

Dave Tooze, Office of Sustainable Development: Good morning, mayor Potter, commissioners. I'm Dave Tooze with the office of sustainable development. I'm really pleased to be before you. This project is one that hasn't come easily. We started this over 2 1/2 years ago, and it started with a vision, a vision of a staff person, Tom Oman already mentioned here, who is a delightful employee, at least from my perspective with energy efficiency and renewable energy. Tom's got great ideas, he's got lots of energy, he had management support to take an idea and research it and when it looked good to run with it. And so I really commend maintenance, as well as Tom and his efforts, and lots of other people that have been a part of the process. As you probably already know, this is part of a broader vision that the city has through the local action plan for global warming that. That envisions the community at large, supported by energy efficiency and other sustainable practices that make for healthy workplaces and a healthy livable community. While maintenance has done a great job in taking this step forward, and we all are excited about the -- the turbine when it's completed probably midsummer, I suspect. There are some innovations here. I'd like to point out that this, I think, is the first urban setting, wind turbine, in the United. I could be wrong there. I know that Toronto, Canada, has one, but I don't know of any other wind turbines that are in a metropolitan area. Most of the time they're rural setting installations, farms and agricultural use. The manufacturer of this turbine, by the way, has made many, many of these. It's not a new product. It's well tested, but it's been utilized in rural settings. And so we're going to have a demonstration of wind-generated electricity right in our backyard. It will be available for folks to drive by on Sunderland Road and see what the city is doing, and through the bureau of maintenance arrangements can be made if groups to go on site and actually look at the turbine up close. I suspect there will be school groups and others that might be interested in taking advantage of that. Jan's already mentioned the partnership with the Oregon Department of Energy. We're taking advantage of a tax credit that we were able to sell, and that helps to bring additional revenue in on the project. Roughly the numbers look like this. It's about a \$51,000 project. Our cost is around \$10,000. And because of that the simple payback to the bureau of maintenance is between 10 and 12 years. So it's going to be a prudent financial investment just on the electricity that is generated and the value of that power. The benefits of demonstration, of innovation and of leadership from the city, they're all free benefits that come along with the package. If you have any questions, I'd be glad to answer them.

Potter: You know, it seemed like when I was out visiting one of your neighbors at Dignity Village, that I saw a wind turbine out there. They may have beat you to it.

Tooze: Perhaps so. [laughter]

Potter: So it's the second, but I'd still like to see a press release on it, that we're the second.

Schaffer: Theirs undoubtedly isn't hooked up to the electrical system.

Potter: That's true.

Schaffer: All the time the wind is going, the power's getting used.

Saltzman: Doesn't Dignity Village feed off of our electricity at Sunderland yard?

Irving: They currently feed off of our electricity, but they buy it, that's correct.

Saltzman: Ok. So we're not --

Irving: We're not subsidizing-- they have a meter.

Saltzman: So none of this wind energy electricity would go to Dignity, or could?

Irving: No. The energy or electricity from the wind turbine would go solely to the house on site.

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Tooze: And any surplus would be fed back into pacific power lines, and if there's a surplus, then they pay us.

Saltzman: I was curious, who is the manufacturer of the turbine?

Tooze: A company by the name of bergy. Tom knows about them.

Saltzman: European?

*******:** No. American company.

Saltzman: Ok. It's a great project.

Potter: Yes. Thank you very much.

Adams: Great work.

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

Potter: Excellent. So this moves to a second reading?

Moore: Yes.

Potter: Ok. Emergency vote. We might want to alert sam to this one. [laughter]

Adams: No.

Potter: Item 208, please read.

Item 208.

Steve Planchon, Manager, Right of Way, Office of Transportation: Good morning, mr. Mayor, commissioners.

Potter: Good morning.

Planchon: This ordinance is a procedural requirement to move forward with the second and last phase of negotiations for property associated with this project. They're relatively minor acquisitions. Three permanent dedications of less than 100 square feet on average, and 13 temporary easements that will last about two years. I'm happy to be here today. This is rob bernard, the project manager, and rob's here to give you a general overview before you take action.

Rob Barnard, Office of Transportation: Thank you. Rob bernard, office of transportation. Thank you, mayor Potter, commissioners. I have a handout here that shows an illustration of the project. This project is a freight mobility project that is at the east end of the columbia boulevard. It's to improve the connection between columbia boulevard and killingsworth. It's a project that has received a great deal of public support when it went for the otia funding (Oregon Investment Transportation Act), it received more letters of support than any project in the state. It's taking care of a long-needed transportation problem in the area. There's congestion that backs up on to the freeway. This project services the columbia corridor industrial sanctuary, which has 50% of the land that's zoned for industrial uses in the metro region. So it's fairly well supported. This second phase of right-of-way acquisition is getting the little pieces of corners of properties, you know, 40 square feet, 108 square feet, that are needed to squeeze this road in between the existing buildings. We've met with all of the property owners over the last -- well, i've been on this project since september of 2001 -- over the last four years. All the property owners that we're going to be buying property from for the second phase are very supportive of the project. Their main comment to me is, "how soon can you get it built?" they're very supportive. One of these property owners lives in austria, and they came in town, we met with them, talked about what we needed, and the two ladies said "where can I sign? I'm ready to sign the paper today." I said we have to get our easement and appraisal documents ready. Most folks are very supportive of the project. Thank you.

Potter: Go ahead.

Saltzman: I see this drawing with the yellow lines. Does the project add lane capacity or add signals? What?

Barnard: Currently columbia boulevard is a narrow two-lane road that is just to -- it terminates to the east, goes under a 35-foot-wide railroad underpass, and terminates at columbia boulevard. We're purchasing the land where the new road is at, and that's already been approved by council,

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we're in the process of buying that property. Have actually acquired some of it. So the new facility actually creates a new underpass underneath the railroad, as you come from the top left, coming along columbia boulevard, dives down underneath the railroad underpass, then comes back up and meets killingsworth at grade. So what you see here is a new connection. What it does is provide a better connection for the industrial uses and industrial sanctuary to get to and from i-205.

Saltzman: So it's a new underpass?

Barnard: It's a new underpass, goes underneath the railroad, which took several years of negotiation with u.p.

Saltzman: Yeah, i'm sure.

Barnard: Actually we have a public/private partnership with u.p. Where we're chipping in money that we would have spent for a shoofly, which is a temporary track that would have been throwaway money. Instead we're taking that money and doing the should fly essentially to the east, making it permanent, and they're chipping in about \$2 million of their money to make it longer, to provide unit train storage to improve rail capacity to the port. So as part of the project we've been working with u.p. and actually have a win-win situation.

Potter: When this project came across my desk a few weeks ago my concern was that it looked like we were not only authorizing the easement, but also authorizing condemnation proceedings. And so I just want to know how those are used, because it seemed like, as you said at the very beginning of your testimony, that these businesses support this action. Why would you need a condemnation proceeding to make it happen?

*******:** Sure. Go ahead.

Planchon: This is an excellent example of actually where the condemnation ordinance comes in to play in a positive way. Rob has, from what we understand, the concurrence of all the landowners, but two of the landowners live in austria. Rob's got a very tight schedule. By having the ordinance in place before we start negotiations, which is required under law, before we start negotiations, in the event that we need to condemn, that ordinance needs to be there. If we can't get ahold of those landowners for one reason or another, we can take possession of the temporary easement, the money is deposited in the court, and when the owners come back into the country, everything moves forward, they get their money, and if they disagree with part of the procedure, then counsel can speak to this if he has more information, they still have rights to enter the process and get to closure in a way they feel is acceptable.

Harry Auerbach, Chief Deputy City Attorney: The short answer, mayor, even though they may support the project, they may disagree with the valuation, and condemnation gives the court the ability to establish the value of the property while the agency is still able to go ahead and do their project. Typically what will happen is the condemnation authority will serve as an impetus to both parties to agree on the price.

Leonard: Interesting.

Potter: Other questions? Thank you, staff.

Saltzman: Oh, what's the cost of the project?

Barnard: The total cost of the project is \$32 million.

Saltzman: And where is that coming from?

Barnard: We have -- the state is the primary funding source, with otia, otia one, for about \$20 million. We have a supplemental for \$816,500. We have an otia three for 3.5. S.t.c. is 4.6. The port of Portland for \$2 million and u.p. for \$1.47 million.

Potter: Thank you very much. Any other questions? Anybody to testify on this.

Moore: I didn't have a sign-up sheet.

Potter: Ok. Questions from the council? Karla, please call the roll.

Adams: It's a great long overdue project. I vote aye.

Leonard: Aye.

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Saltzman: Yeah, this is a real complicated part of Portland from a traffic point of view, so it looks like this is a good improvement, particularly for freight movement in this area. This is a great project. I'm glad you were able to get so many people to chip in on the funding and look forward to its completion. Aye.

Sten: Aye.

Potter: You know, this is -- freight mobility in the city is an issue, and this will help tremendously. usually the two or three big ticket items that the community wants to address, the columbia corridor is one of them. I vote aye. I think it's a good project. [gavel pounded] we'll move on to the next item. I notice we have young folks up there. What school are you from? [inaudible] and we also have some students here. Where are you from?

*******:** Oregon episcopal school.

Potter: Thank you for being here. Thank you for being here, too.

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

Potter: You're welcome. Ok, Karla.

Item 209.

Potter: This is the second reading. Let's take a vote.

Adams: Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

Potter: Aye. [gavel pounded] item 216 -- excuse me. 210 is also a second reading.

Item 210.

Potter: This is a second reading. Let's take a vote.

Adams: Aye. **Leonard:** Aye.

Saltzman: Notwithstanding my concerns about using condemnation, this project seems to be at most talking about condemning maybe small portion of the right-of-way as opposed to people's houses or businesses, so I will support this. Aye.

Sten: Aye.

Potter: Aye. [gavel pounded] this is our last item for the morning. We are recessed until 6:00 p.m. this evening. [gavel pounded]

At 11:21 a.m., Council recessed.

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Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

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Item 211.

Potter: The council will come to order. This is a hearing on the implementation of measure 37. [gavel pounded] last november the voters of Oregon, including Portland, approved ballot measure 37. Last december, the city council adopted an ordinance that established a preliminary framework for the city's implementation of this new state statute. Today with a couple months' experience under our belts, we're making some proposals that will flesh out that original framework and further define how the city processes measure 37 claims. The measure contains many ambiguities, making it difficult to implement it in a clear, straightforward manner. Nevertheless, it is my intention that we will implement 37 -- measure 37 in a fair and balanced manner. The city has an obligation to our citizens to implement the law in a reasonable way that protects claimants' rights as well as the rights of neighborhoods and the larger community. However, I also believe that the authors of the measure failed to consider the rights of neighbors and the possible negative impacts of these claims could have on our quality of life. The resolution and ordinance we're going to consider today recommends providing public notice and opportunities for citizens to provide comment, establishing a fair claim filing fee, and building owners whose claims are denied for the city's actual processing cost, creating a legal right to sue for neighbors who may be harmed by the development allowed by a waiver of regulations, providing funding for property appraisal services to augment our analysis of certain claims, and supporting the Oregon attorney general's opinion that waivers of regulation under the measure belong to the current owner only and are not transferable to a future owner. Our program measure for measure 37 and a member of our staff will walk us through these proposals. With that, what i'd like to do is combine these two items, Karla, both item 211 and 212. The first is a resolution. The second is an ordinance, so that we can hear them simultaneous, since they're both on measure 37.

Moore: We still need to do a roll call.

Potter: What?

Moore: A roll call.

Potter: Thank you very much for keeping me in line. Let's have a roll call to see who's here. [roll call taken] [gavel pounded]

Potter: Thank you, Karla.

Item 211.

Potter: Could you please come forward? This is hanna kuhn from my office. Hanna, could you walk us through the steps of these two documents?

Hannah Kuhn, City Program Director for Measure 37: I'd be glad to. Good evening. My name is hanna kuhn. I'm the city's program measure for measure 37. Mayor Potter, commissioners, thank you for the opportunity to present mayor Potter's recommended additions and improvements to the way the city is implementing measure 37. Before I begin, i'd like to acknowledge some of the members of the measure 37 executive committee and staff supporting my work. Here tonight is linda, ty, and rebecca, betsy, lana, katherine from the city attorney's office. In response to feedback I received from you, I have not prepared a powerpoint presentation this evening. And --

Potter: Thank you.

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Kuhn: -- and have provided some copies of the legislation that we'll be considering tonight on the table behind the council clerk if citizens would like to follow along.

Potter: Excuse me, just a minute. Did you folks in the audience, did you pick up copies of the resolution ordinance? It's over on the table behind the council clerk.

Kuhn: Before I go into the proposed legislation, before you this evening I'd like to briefly recap legislation taken before the council last december and walk you through what you'll be considering this evening. As you know, ballot measure 37 was passed by a majority of voters last november and became effective december 2, 2004. It adds provisions to the state planning and zoning laws codified as o.r.s. Chapter 197 to provide remedy for owners whose property value has been reduced by restrictions. By state, regional or local land regulations. In general terms, measure 37 requires that a city -- if a city land use regulation restricts the use of the owner's property and reduces the fair market value, the city must pay them or not apply the regulation. Measure 37 provides no new revenue to pay claims. On december 1 last year. The city council of Portland adopted an ordinance that amended title 5.75 of the city code to establish a preliminary framework for reviewing claims. Some of the highlights of that ordinance, just to refresh your memory, we define the information required for a claim to be complete. We established a limited term program manager position sitting before you. And we required that city council would make its decisions about resolving claims at public hearings. Last december the city council chose not to adopt a fee for filing a claim, but reserved the right to establish a fee in future, retroactive to december 2 of last year. The council expressed its desire that public notice be provided. Very, very briefly, I just want to let you know the city of Portland has received 10 claim submissions. Eight of them are based on environmental zoning. Compensation demand amounts range from \$55,000 to \$1 million. Most claimants on residential properties want to build or expand a single dwelling. Two would like to subdivide into multiple lots or build multiple units, and one would like to display automobiles for sale. That's just to give you a feeling. So if you turn to the current resolution and ordinance before you, I want to tell you it responds to the council's direction last year to return with recommendation for public notice, fees, and includes some additional proposals as well. Although measure 37 explicitly states that these claims are not land use cases, and therefore are not subject to provisions that require public notice, mayor Potter and the council have expressed their view that it is essential that we inform nearby property owners, neighborhood coalitions, neighborhood associations, and business associations, about claims and offer them an opportunity to provide input. Some local governments in Oregon have chosen not to provide public notice or to hold public hearings. Based on discussions with individual members of this council, their staffs, the measure 37 executive committee, and neighborhood coalition committees and land use chairs, we recommend notice be provided to property owners within 400 feet of the claimant property, as well as to neighborhood coalitions, neighborhood association and neighborhood business associations. Public notice should be provided. First when the program manager determines the claim is complete and ready to be evaluated and a second time 30 days before a council hearing to consider the program manager's report and recommendation on how a claim should be resolved. Under this proposal, the public would be invited to provide written input on the complete claim, to help inform the work of the program manager and the claims review team as we begin to evaluate claims based on their merits. At the council hearing, as always, the city council would consider verbal and written testimony from citizens. This resolution also directs the program manager to present any recommendation that I bring to you to modify, remove or not apply regulations. We tend to use the word waiver as shorthand for those three choices, to resolve a claim as personal to the owner and nontransferable to a future owner. As the mayor said in his introductory remarks, the city's assertion that measure 37 waivers are not transferable is based on a february 24 opinion written by the Oregon attorney general. Measure 37 claims are based on the premise that owners may seek compensation if regulations reduce the fair market value of their property. The processing of claims involves

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evaluating evidence of continuous ownership by current owners and their family members, restriction of use, and the impact of different sets of regulations on market value of property. For some claims, the city may wish to seek independent analysis or documentation of ownership and market value to supplement your staff's evaluation. Independent analysis may allow the city to show that certain claims are ineligible and therefore deniable under the measure. Or if the city chooses to pay compensation to resolve a valid claim, independent evidence may allow it to pay a smaller amount than the amount the claimant alleged. In order to hire independent real estate appraisal, economic evaluation and title information services, the mayor's office has published a request for proposal for a flexible services contract. The resolution before you directs the office of management and finance to transfer \$50,000 in general fund contingency to the mayor's office account to fund this contract, subject to your approval. By that I mean if the council adopts this resolution today, the staff would have to return with a separate ordinance to approve contract funding. The proposed funding amount is based on a number of assumptions. Given all the uncertainties, I wanted to make it clear that we're making some assumptions. Our expectation is that the rate of claims we receive will probably increase over time. We believe that property appraisals that have to address the impact of specific regulations on market value is more complicated than a standard appraisal and therefore may cost somewhat more than a standard property appraisal. Some information we've gathered from the bureau of general services and a major property appraisal firm in Portland suggests that a residential appraisal under normal circumstances rates about -- costs about \$700. A more complex residential appraisal may cost \$1,000. An average commercial or industrial appraisal costs about \$7,000. Something more complex, for industrial or commercial properties, may run as high as \$10,000. If you'll turn to the proposed ordinance before you tonight, this ordinance proposes a filing fee and a private right of action for neighbors. I'll take them one by one. After a lot of lively debate and input and consideration, the measure 37 executive committee recommended setting a modest fee. In keeping with the city's practice of not charging a fee at all for processing risk management claims, because the measure itself is silent on whether local governments may charge a fee, and because a high fee might be viewed as erecting a barrier to potential claimants. Specifically this ordinance recommends establishing a filing fee of \$250. This is approximately the cost of filing a lawsuit in circuit court. It is also equivalent to the cost of the city providing two public notice mailings. The ordinance recommends that the city track its costs of processing claims, and authorizes the program manager to bill actual costs to claimants whose claims are denied by the council. In the spirit of fairness, the city would absorb the processing costs for claimants whose claims are approved by the council and resolved through payment or waiver of regulations. Last december the city council reserved the right to establish a filing fee in the future, which you could do through this ordinance, and make it apply retro actively to claims filed starting december 2. Given the potential difficulty in collecting a fee applied retro actively, and in the interest of transparency and fairness, the city council may wish to amend this proposed language from shell bill the claimant for actual costs to may bill the claimant for actual costs. This would allow us to bill claimants who file a claim from the time you adopt this standard going forward as opposed to applying it retroactively. That's something for your consideration. Finally this ordinance creates what is known as a private right of action. This would allow a property owner whose property value is reduced by development that is allowed by measure 37 waiver of regulations to recover compensation from that claimant in circuit court. In plain english, that means a neighbor could sue a neighbor. A private right of action has been created by a number of Oregon jurisdictions, and a bill that would create as private right of action on a statewide basis has also been filed in salem. I expect you will hear testimony in favor of creating this right from some of our testifiers this evening. So if you have any questions, i'd be happy to answer them to the best of my ability.

Potter: Any questions?

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Saltzman: This is probably referred to Linda Meng, but is it -- do we it within our power to create a private right of action, notwithstanding the fact that other jurisdictions have done so?

Kuhn: I'll defer to the city attorney.

Linda Meng, City Attorney: Linda Meng, city attorney's office. The city has a right to create a private right of action in general. That was decided in the Besaw's case. As a general matter the city has a right to create a private right of action. This is somewhat uncharted territory, and lots of jurisdictions have done it. Their analysis is -- it's not quite clear exactly where it all comes down. I think most of the thinking is that this is something like a nuisance and therefore it could be upheld on that basis. But because this is -- we're sort of looking at a new territory here, I don't know -- ultimately a court will decide whether that kind of right of action will be upheld or not.

Saltzman: Because nuisance issues are currently resolvable through tort claim process. Is that --

Meng: There is a current action for nuisance, if someone does something in your neighborhood that's particularly offensive. It's the -- you know, the hog farm or the jackhammering or something like that, which creates a disturbance that would disturb a reasonable person. The question here, I think, that a court's going to have to decide is whether something that someone does under measure 37, which is allowed by measure 37, could also be subject to a right of action, if it damages a neighbor's property. And as I said, that's sort of uncharted territory, and ultimately I think a court will have to decide.

Saltzman: Uh-huh. Thanks.

Potter: Any other questions for Hanna? Thank you.

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

Potter: Karla, could you please call the folks that are here to testify.

Moore: Come up three at a time.

Potter: Excuse me, before you begin, let's everybody sit down. Thank you for being here, first of all. Secondly, when you testify, please state your name first, and you do have three minutes.

Erik Palmer: Sure. My name's Eric Palmer, 8207 North Edison. I'm the land use chair of the Friends of Cathedral Park Neighborhoods Association. I basically just wanted to come down and express my support for these two amendments. I have a perspective about this issue that I wanted to put forward that I haven't seen in the media or public discourse yet. Not too long ago I was a participant, along with many of my neighbors, in the adoption of the St. Johns/Lombard plan, a prong process that took more than two years, and quite a bit of resources to accomplish. The biggest concern that I have, and I think I share with my neighbors, is the possibility that measure 37 is going to undo the investment that so many people have put into such a recent planning process. We secured essential zone changes that we want to protect in that neighborhood. There's also a lot of value that went into the planning process. We talk about property values, but owners, those of us who own property in our neighborhood, put our own property values on the line in the adoption of these zoning changes. We put in personal capital in participating in the plan process. For many people it involved foregoing wages, foregoing vacation time, during the planning process. And there was tax dollars that went into the adoption of the plan. These are all placed at risk by measure 37, and I just want to again repeat that I support these amendments, preserving neighborhood association involvement is essential to preserving the intent of measure 37, to also preserving our property values and the investment that we've put into our neighborhood. We all have an economic stake in the outcome of measure 37 proceedings. Thank you very much.

Potter: Thank you.

Jacob Brostoff: Mayor Potter, commissioners, I apologize for my attire. The chair of the committee that I staff is sick, and so I wouldn't be here submitting this testimony today if he was here to do that. That's why I'm here looking the way I do.

Potter: Could you state your name, sir?

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Brostoff: Yes. Thank you for the opportunity to testify today on the implementation of measure 37. I'm the chair, representing 20 neighborhoods in southeast Portland. Southeast uplift was active in the campaign to defeat measure 37, and we've continued to work on the issues surrounding its passage. We advocate for an inclusive open claims process, fiscal responsibility, and protecting Portland's quality of life of we previously submitted our coalition's thoughts on measure 37. We submitted that along with a copy of the testimony tonight. We're glad to see that the city is adopting an open, transparent claims prosecute, as well as creating a private right of action. It is our hope these two steps will include citizen participation. However, we wish to call to your attention two other items that we previously advocated for -- i'm sorry -- one other item we previously advocated for, as well as a budget issue. The first is, we ask that you impanel the measure 37 citizens advisory committee. We mentioned this in our earlier letter to the previous council. The citizens advisory committee that we envision would work with the city staff for implementing the measure and provide advice to counsel about policy and claims. It's our belief that there are a number of important policy issues related to implementation of the measure, and we ask that you formalize the citizens' role in evaluating and making recommendations about these policy issues by creating this committee. Finally we ask that as you set the price for claims, you consider not just the cost of processing claims, but also the costs associated with writing and implementing new regulations. As the bureau of planning and development services look to cut their budgets, the complexity of their workload is increasing due to the measure. It's important to take into the account the additional of costs of developing measure 37 compatible regulations. Thank you for your time and for consideration of a very difficult set of issues. Sincerely, paul loney, chair, southeast uplift and land use committee.

Potter: Thank you.

Jim Karlock: My name is jim karlock. I'm testifying as a private citizen. I want to compliment you on including notice in here. Also this concept of allowing right of private action strikes me as a very good move, but it's not going far enough. All over Portland we're seeing an increase of four-story buildings lining virtually every main street. I spent quite a bit of time opposing the lombard plan because of those features. It would very correct, the thing to do, to create a right of private action for those people who are going to be burdened by the city planning process shoving a high-density apartment building next door. Do not limit this merely to measure 37 claims. Thank you.

Potter: Thank you very much. Karla.

Adams: Measure 37.

Linda Bauer: Linda bauer, citizen. I think what hanna has proposed is really fair and balanced. I hope you pass it. Thank you.

Potter: I think that's a new personal record.

*****: That's why I let her go first. Do you want to go?

*****: Go ahead.

Bonny McKnight: My name is bonny mcknight. I live at 1617 northeast 140th. I'm land use chair and cochair of russell neighborhood association and coordinate the citywide land use group, but tonight i'm speaking as an individual. First of all, I want to recommend both of these resolutions. I think they cover the bases that can logically be covered right now. But more importantly I think I want to commend the way in which this has developed. When measure 37 was passed in november, before two of you were even officially sitting where you're sitting now, the city of Portland, mary volm particularly, put together a group of folks to come to citywide land use group at our november meeting and talk about what the city knew, what their timeline was, and in my estimation reduce the anticipation, emotion, nerves, for a lot of folks who had no clear idea. I'm not sure the city said we know more, but at least they said we know we don't know more and we're going to work on it. In december, we held a special planning committee meeting of a group of people from citywide land use. Hanna visited that meeting, as did about-to-be-commissioner adams. And we talked some

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more about what citywide could do as the organization that has all of the land use folks and a lot of other neighborhood folks involved with it to make sure that the citizen part of this process was covered in a positive way. Hanna came to our january meeting. You wouldn't let her come to our february meeting because it was the same night as the public budget forum, and so she was co-opped. But we made her pay if that by -- in february. Hanna agreed to go to every coalition land use meeting and in fact did that to talk to them individually. She did such a great job as manager of this thing, explaining the complexities that the land use community at cnn actually gave her a round of applause. So I talked to her about citizen process, if I were you. She will be back at our citywide land use meeting this -- on the 28th to continue this kind of update and progression on 37. The fee is reasonable. It's not punitive. The notice reaches the point that it should, without getting overly burdensome for you, and kind of gives us the change of status points for neighborhoods. The private right of action is -- is a good thing to test, and I hope it does work. And the nontransferability -- nontransferability is particularly important, I think, because otherwise there's never a point at which any of these properties will stop. There are many issues involved, many ways to resolve the issues. And I appreciate the careful pace you're using to get to the -- to the next stages. We'll continue to work with you to identify how to balance private property rights with the public good for the city we all share. Thank you.

Potter: Thank you, bonnie.

*****: [inaudible] do I need this microphone?

Moore: Yes.

Mike Lehne: Probably. Due to the time constraints in getting here tonight, I wasn't able to really put a clear set of notes together, so if I stumble along here a little bit please bear with me. I wanted to remind the council that many of the same 61% that passed measure 37 also put you in the seats that you're in now. And I think you have a responsibility to respond to the 61% that passed measure 37. This wasn't something that was done lightly, and it wasn't something that was done by -- regardless of what our governor says -- uninformed voters. We've got a purpose, and the purpose was we want our private land back, we want to use our private land. We don't want Portland planning to keep putting layer after layer after layer over the top of our land. That was measure 37. That's what it's all about. We've all paid, many of us, at least the ones that i've talked to, hundreds, if not thousands of dollars, fighting this issue to begin with. And we don't need another \$250 on top of all of the applications -- on top of the fees required to get an application through the planning department right now for measure 37 claim. That's like rubbing salt in the wounds, gentlemen. I'm sorry that there's budget constraints, but I tell you what, since the early 1990's the Portland planning has spent bucketfuls, now let's make that truckfuls of money on getting us where we are today, and that's putting layer after layer of government over our land. And I speak from experience because the city's trying to steal 26,000 square feet from me because of an overlay zone. The issue is private property. And we own private property, we should be allowed to use our private property. We don't -- well, everyone in a neighborhood should have some input, maybe about developments that may seem to be inappropriate. Most of that's covered by original planning rules anyway. So there's not going to be hog farms next to a single family residence, we're not going to have 10-story buildings out in the middle of nowhere. Those horror stories don't add up. They're not there. This is about private property. The transferability issue, the a.g. gave a letter of advice, not a letter of opinion. So it's not required that any jurisdiction follow it. And to say that, ok, well, we're going to give it back to you temporarily, but we're going to take it back from you eventually, you know, come on, this isn't the way measure 37 was written. And I would really expect the council and you, mr. Mayor, that I voted for, to follow measure 37 in the spirit of measure 37, and not play games and try to go around it. Thanks.

Potter: Thank you.

Moore: That's all who signed up.

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Potter: Council discussion?

Saltzman: I had a question, probably for hanna. On the claims processing fee, you were recommending that we say rather than a claimant shall pay, a claimant may pay \$250.

Kuhn: No. The may was referring to the passage that describes the program manager shall bill a claimant whose claim is denied by the council for the actual costs of processing. It's the second sentence in that passage.

Saltzman: Oh, may bill.

Kuhn: Uh-huh.

Saltzman: Ok. That's actually really to the point of my question, really, was that provision right there. I'm sorry if I didn't pick up on this earlier. Why do we have that in there? It sounds kind of punitive, even if it's a may.

Kuhn: Right. There has been a lot of discussion about requiring every claimant to pay the actual cost of the city's work in processing their claim, and a compromise was struck in which we said if we've done harm to someone, in other words if we've reduced their ability to use their property and reduced the value of it, that's ours, we'll absorb that cost. The alternative is if someone files a claim submission that does not have merit and we have to spend the time and energy to review it in order to tell them that we want to deny it, that is that you would deny it, the council, that they should absorb the costs, because we're talking about taxpayer dollars. So it was an idea of fairness. You may disagree with that philosophy, but that's where it came from.

Saltzman: But the language doesn't speak to merit. It just speaks to a claim. And that's why I guess, if somebody files a complete claim -- I mean that's the first test of merit, is the claim application complete.

Kuhn: Right. And the second step is, have they shown that we've restricted their use and reduced their value.

Saltzman: Which is part of the application.

Kuhn: That's part of our analysis of what they submit, that's correct.

Saltzman: So are you saying that we would reject a claim as being without merit?

Kuhn: Yes, i'm saying it's possible --

Saltzman: If there was a good faith effort to meet the spirit of what they met measure 37 was all about?

Kuhn: The council would say that is not a valid claim and they could deny it.

Adams: Is there any other example of pricing or fee finding strategy like this in the city?

Kuhn: You mean that I base this on something else we do in the city.

Adams: If someone is denied something, that they pay more?

Kuhn: I can't speak to what else the city of Portland may do, but I did provide all of you last week with a background report that provided a little bit of summary of what other jurisdictions in Oregon have done. I used that as the basis for the recommendation that you have tonight.

Adams: Who else does it?

Kuhn: Many jurisdictions. I don't have the table in front of me. There's a variety of approaches. Some of them charge a large fee up front. Some of them charge a small fee and track costs. Some require a retainer. And then --

Adams: But there are jurisdictions that do it just like this?

Kuhn: Yes. I apologize for not being able to say on the spot which those are, because I looked at about 35 of them.

Saltzman: For measure 37.

Kuhn: Yes, for measure 37 specifically.

Saltzman: What commissioner adams is asking, and i'm asking, too, it seems like if people file a land use review application, building permit application, admittedly they pay more than \$250 up front.

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Kuhn: Uh-huh.

Saltzman: But if it's denied, we don't bill them for actual costs that go above and beyond what the fee was, do we?

Kuhn: No. I agree. I'd like to remind you, these are not land use applications, of course.

Saltzman: I know they're not, but --

Adams: They're land-related actions in a tort atmosphere.

Kuhn: That's a good description.

Saltzman: I know it's not land use, but i'm just saying as an example, it seems a little, as I said --

Kuhn: It's intended to recover some of the costs, which is a lot more expensive than going through a land use review. I can tell you, we've started to track our costs. And the council can choose not to charge any fee, and they can choose not to collect actual costs from any claimants, but we thought it was fair if people are filing meritless claims. In other words, we spend a lot of time to find out that we haven't done them any harm, that they should cover the costs.

Adams: Do they always lack merit if they lose?

Kuhn: That's my assumption.

Potter: I think that's the presumption of the finding, isn't it?

Saltzman: Yeah, that answer just made me even more uncomfortable with this language. That's an arrogant assumption.

Kuhn: I guess I should clarify to say that council wouldn't deny a claim that's valid, that has merit. They would choose to award relief, either by paying compensation or by waiving regulations. I'm not sure if i'm not being clear or -- maybe you can ask me another question and I can try to explain it differently. Only those where the council feels that this person has not been harmed by us, in which case we owe them no relief, would we charge them for the cost of processing their claim.

Saltzman: What about if we just did away with that sentence altogether?

Kuhn: That would be a policy choice for the council to make.

Potter: I see nothing wrong with the sentence myself. Her suggested change is may bill the claimant. Doesn't have to occur each and every time. But just a hypothetically say that if someone was doing this from a malicious point of view, for whatever reason, and that came out, should we ask them to repay us for the amount of money, time we put into it.

Saltzman: Well, I guess part of me thinks we're in totally uncharted territory here, and what somebody views as malicious or without merit may not be viewed by the person who intended to seek the claim. I mean, measure 37 is a lot -- about a lot of pent-up frustrations about land use. And I fear we only risk exacerbating the decisions that led to the passage of measure 37 by a provision like this.

Adams: I see a difference between lack of merit and -- I would agree in terms of claims that are malicious in nature. I don't know if that's a legal distinction that one can hang a policy on, but I think that people in good faith could file a claim, lose the claim, but not necessarily have done so in a malicious intent or in a malicious actual manner. Philosophy 101.

Saltzman: I guess, you know, facing the prospect of -- before I file this claim, I may in good faith think this is a legitimate claim, the city could deny it, find it meritless, and stick me with some bill, which could become a lien on my property, ultimately, and all those other things.

Betsy Ames, Bureau of Planning: Betsy ames, bureau of planning. We were reminded that the land use board of appeals does have a similar type of provision. This language could be changed if the council wanted -- felt more comfortable to say the city council may bill the claimant rather than the program manager, if that were something that would make the council as a whole more comfortable with that, if you wanted to pursue it further.

Potter: Any consensus or discussion?

Saltzman: Well, I would move to strike it, but I don't think I have a second. But I do think it's not going out of the gate with our best foot forward.

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Leonard: Which specifically are you striking?

Saltzman: Well, the sentence, if the city council denies a claim, the program manager shall bill the claimant for the city's actual cost to process the claim.

Potter: She recommended changing it to may.

Saltzman: Even may, I don't think it's putting our best foot forward, in striking a fair and balanced approach to this. It strikes me as a little punitive, potentially an impediment to people filing claims in good faith because fearing what could be the cost if my claim is deemed to be without merit.

These are not necessarily, you know, malicious people. We're all in unchartered territory here.

Leonard: I'll second the motion.

Potter: Any other discussion? Karla, let's call the vote.

Adams: I have to vote first. So we would be striking the sentence, if the city council denies the claim, the program manager may bill the claimant for the city's actual processing of the claim. No.

Leonard: Aye. **Saltzman:** Aye. **Sten:** No.

Potter: No. [gavel pounded]

Adams: Can I ask some additional fee-related questions? I appreciate, hanna, that you and the team have struggled mightily with all these issues, and I think you've done a really remarkable job in unchartered territory. So this question -- my next question about the fee is not argumentative in nature, but it's to think -- share the thought process of the group on the fact that one of the realities by establishing a \$250 fee, which seems reasonable to me, is that it provides an unintended incentive for people to use the 37 process in some cases than the adjustment process, where the fees in environmental zones could be quite a bit higher. What is the thinking of the collective brain trust related to 37 on that unintended consequence?

Kuhn: I think it's an excellent question. It's one we did struggle with, you're right. There were people arguing very strongly we shouldn't charge anything at all. Of course, in reality, because the council has not yet set a fee, the claims that have all come in since last december have all come in without any fee at all. And there is some sense perhaps that -- any fee at all might serve as a little bit of a deterrent to people who perhaps shouldn't file a claim, but perhaps who go through a land use review and find out that they can use their property as they would desire. On the other hand, we played out the idea of making a measure 37 filing fee similar to the cost of land use review, and I think many, if not all of the members council, know that some of them are fairly high and don't come close to covering our actual costs. Multnomah county is sort of the poster child for the highest fee in the state.

Adams: How much is that?

Kuhn: \$1500. They've been fortunate only to have four claims filed. As far as I know, no one has bothered to pay the fee, and they've been pilloried on the Oregonians in action website as being counterproductive in trying to discourage people from filing claims at all because the fee is so high.

There isn't a right answer to the question about fees. I think we were trying to strike a balance, something that is relatively modest, but greater than zero. I think you're right, it's still a lot less than comparable land use reviews, which is a separate conversation I would be happy to have with the council at another time, because inc. It's relevant for some of our claims.

Adams: Looks like gil's going to jump out of his chair.

Gil Kelley, Bureau of Planning: No. We did struggle with -- gil kelley, planning bureau. There's certainly the potential for kind of an end-run around our process in two directions. One direction is to the circuit court, where the filing fee approximates our filing fee. And we thought if we set it much higher than that, we're certainly inviting that potential end-run.

Adams: Because they don't have to go to us?

Kelley: They don't have to go to us really. They could sort of perfunctorily drop a note on our table and waive the 180 days and file the filing fee that way. Looking at the 10 claims filed thus far

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in Portland, there are only 10, thankfully, eight of them involve environmental zones, fees for environmental review that don't abide by the strict standards track, where they're asking for some kind of adjustment run roughly \$2800, \$2900. So there is a potential that we're creating kind of an end-run about our normal permit process by the differential in fee. I think given those two tracks, the council may want to consider at some point in the future as a policy matter whether our environmental review fees are set appropriately or whether they might in fact be more heavily subsidized.

Adams: And then the jacobcs representing southeast uplift, the request for an advisory -- citizen advisory committee, I mean I know you've relied -- you've done a lot of outreach. You got praised for that. And the citywide land use committee i've been to to talk to on this issue, and I know you've been back many times, but what about the proposal to sort of institutionalize, the group decision making and further processing of individual claims, the suggestion that we have a citizen advisory committee within that.

Kuhn: We've talked about in our measure 37 executive committee, and i've discussed it with citywide land use group a couple of times as well. We've struggled a little bit with this question, because citizens would -- depending how close they get to policy decisions -- would be venturing into confidentiality, and it makes it difficult for a citizen representing a group as opposed to just a citizen in the community who has a perspective from the community, if you see the difference, being a representative versus just being an individual, that there are curbs we would probably require them to put on their ability to go back to the larger group, share, bring back, because some of these discussions about how to resolve a lame is, you got a hint last evening in executive session, are fairly sensitive. On the other hand, in discussions with bonnie mcknight, the chair of the citywide land use group, we've been exploring an idea that would not be exactly a stand-alone city - - citizens advisory committee, but would sort of use the good offices and energy of the citywide land use group, which would be open to others, not just land use chairs, to facilitate citizen input, once we have a complete claim, and to do a little bit education about measure 37 claims and what sort of analysis I and my team, as well as the city council, are going to have to go through, so that they could provide, not just what I would say laypeople's input, which is also valuable, but sort of to educate them, so that their input is perhaps of a higher technical nature. Bonnie has said informally she would like to have her group offered to the city to perform that function. I've discussed this with mayor Potter once, and he seemed somewhat open to that idea. It's not exactly the same thing as a citizens advisory committee, but measure 37 claims are also a somewhat different animal.

Adams: Is it not possible, directed to the city attorneys, is it not possible to use this word figuratively, not literally, to deputize some citizens so they are citizens, but, you know, they have to operate under a particular code of conduct and standard, but they can be citizens advising us within this process, knowing that this is a tort process and not a law enforcement process? Is my question reasonably clear? I love it when you get that blank look on your face.

Linda Meng, City Attorney: I'll work on it. Linda meng, city attorney's office. It gives me some pause for issues of attorney-client privilege to have citizens involved. It's possible to do certain things, where we had some confidentiality. I'm not -- i'm not positive we couldn't make it work in some ways, but we would have to look closely at whether we run the risk of losing attorney-client privilege in that situation. That's what I would be concerned about.

Adams: So as we revisit this in the future, i'm sure, could you maybe come back to us with a further thought piece on that?

Meng: Sure.

Adams: Then if I might, i'd like to propose an amendment for further -- i'll pass that out -- for further -- along this in a same lines, in terms of a request for further staff -- further staff work --

Potter: Do you folks have one?

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Adams: She's got to make copies. To add an additional -- well, first off, is it an appropriate time to move these, to ask -- one is be it further? I just want to remind the council that you have not yet made a decision about mayor shall, so just to keep that alive issue.

Saltzman: We're on the resolution right now, I guess.

Sten: Can we address that? I would use the word may.

Saltzman: Second.

Potter: Call a vote?

Adams: Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye.

Adams: So one is under be it further resolved. The program manager is directed to provide written notice by, i'd like to insert the words regular mail, described above, at two points during the claim process, and then insert the words sent within five business days.

Leonard: We're talking about two different documents here, so everybody's following.

Adams: We just switched. Sorry.

Potter: This is the resolution?

Leonard: This is the resolution.

Potter: The second page of the resolution.

Leonard: Right.

Sten: Mayor, would it make sense to vote on the first ordinance and then take amendments on the resolution?

Potter: Ok. Karla, call the vote on the resolution -- I mean the ordinance. Excuse me.

Kathryn Beaumont, Sr. Deputy City Attorney: Mayor Potter, the ordinance is a nonemergency ordinance, so it would have to pass to second reading.

Potter: Oh, ok. Now we're on to the resolution. Called adaptation.

Leonard: I thought it was a good idea.

Adams: And then delete the word, the, so it's directed to provide written notice by regular business mail sent within five business days, to clarify expectations that occur later on in the same be it resolved section, that within 30 days before council hearing of a claim, just so that our neighborhoods and our residents know we'll drop it in the mail on the fifth day. That's our standard for success there. That's a relatively easy change. The second change is to be it resolved, and i'll read it for those who don't have a copy of it, that the program manager is directed to return to the city council after working with the bureau of development services, the city attorney, the bureau of planning, and i'd like to insert citywide land use committee, to develop a method by which settlement of valid measure 37 claims may be pursued through proactive negotiation between claimants and the city. The purpose of this alternative process should be to mitigate legal costs, claim liabilities, and impacts associated with the waivers of city code where property owners are interested in an outcome rather than compensation of their claim.

Leonard: Other than that.

Adams: Other than compensation of that claim.

Leonard: For their claim.

Adams: For their claim. Takes a whole village to read this darn thing, doesn't it? [laughter] at least when i'm reading it.

Leonard: You're having attention deficit disorders.

Adams: Just an average day for me. Ok. In development of this draft policy for city council consideration, the following should be considered by staff. These are not directive, other than for staff to consider them and get back to us. Once established, that the alternative process should be offered to claimants with a valid claim, at the earliest possible stage of the process. If possible, this process should include an suspension of the 180-day timeline given to municipalities to process measure 37 claims while the parties are pursuing an alternative outcome. The notification of the city council hearing to consider the proposed resolution -- and this is the alternative resolution

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process -- should be sent to all property owners within 400 feet of the site. And then the program manager should report back to the city council on the development of this alternative with the proposal consistent with these provisions no later than may 20, 2005.

Leonard: Not later than.

Adams: Not later than. Thank you, commissioner leonard.

Leonard: Pretty bad when a fireman and cop read it better.

Adams: Yeah, I know. So the purpose of this amendment is really to try to develop an option where the city is involved in a position to engage in problem-solving with claimants interested in pursuing a specific outcome as opposed to pursuing their state legal rights afforded to them by passage of measure 37. It's the difference potentially between someone, like I used to live in northwest Portland, someone being allowed to replace stairs that are nonconforming, whatever, versus a negotiation with city as opposed to going all the way through measure 37, which has the potential of wiping that property, not just being able to replace stairs, but wiping that property of a particular zoning code. This is intended to be a problem-solving. It's also intended to be very accountable. I want to make sure that six months to 12 months out, that the city has done everything it can for valid claims that are of a common sense nature to have helped problem-solve open those claims. People can always use the ballot measure 37 process. That's the law of the land.

Leonard: Is that a motion?

Adams: So I move to amend the ordinance as written, not as spoken.

Leonard: Second.

Adams: Ordinance

Leonard: Second.

Potter: I would like to call up the city attorney to ask a question. This was brought here this afternoon, so we haven't had much time to look at it, and I realize you haven't either. I'm wondering about the issues, particularly about suspending the 180-day timeline. Can we do that under the state statute?

Meng: We couldn't do it unilaterally. I think a party could agree to it. So if a person came in, filed a measure 37 claim, then wanted to go -- wanted to say, I will waive that 180 days, I believe they could do that under the -- ordinarily you can waive a statutory right. Sometimes you cannot waive a constitutional right, but I believe that a claimant could do it. But we could not do it unilaterally.

Adams: Just to clarify, this amendment doesn't actually put anything into place, but just asks staff to go off and consider issues, just like the question you asked, mr. Mayor.

*******:** I understand.

Saltzman: Why did you choose may 20, 2005, for reporting back with this?

Adams: We understand that there's a lot of burden on hanna and the team is busy working on the 10 claims. We wanted to give them plenty of time. But that was granted pretty arbitrary.

Saltzman: When do we have -- the 180-day clock on the first claims is --

Kelley: It's august -- by our -- isn't it? It is july? Bay our completeness clock. I stand corrected. July.

Meng: We are, however, talking with people, and working through the process. It's not that we wouldn't talk with anybody and try to resolve claims if we could before may 20, obviously.

Adams: So the amendment does -- I mean the amendment is two things. One, it acknowledges that that's going on. And I would like to put a little structure around that. For instance, i'm proposing this with some -- with the hope that staff will get back on sort of how decision making would go, whether we would -- we -- want to pursue with a claimant a negotiated solution as opposed to going down the 37 track. And right now it seems pretty unclear to me how those decisions are made. I'd like to see that firmed up and provided some structure. I think there's some opportunities there. And the second thing is, for those people that -- of goodwill that want to accomplish something on

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property that they own, I want to make sure we're willing to talk to them and that we're available to negotiate with them, and that they don't just have to use this big, ugly hammer, ballot measure thresh, to get all things done on their property that right now isn't necessarily from their perspective allowed under the code.

Kelley: Could I ask a clarifying question?

Adams: Yeah.

Kelley: It goes to what you were last saying. The way it's written -- and I understand you're asking us to go away and think about this and come back to you. I understand that perfectly. But the words here say the method by which settlement of a valid measure 37 claim, that seems to signal that there is a determination that the claim is valid, and then the method of disposition could include this track.

Adams: I think we should say --

Kelley: Which is fine -- I guess that's a clarification we'd like --

Adams: Potentially valid.

Sten: Potentially valid.

Kelley: Oh, ok. I guess then my concern would be, are we in fact opening the door very broadly to say to people, if you don't like our permit process, for any reason, or our set of rules, come on down, and we'll negotiate, don't worry about the permitting structure we have. That's a much broader, potentially more worrisome message, than settlement within a case of a valid measure 37.

Adams: That's why the other -- I think the other thing that -- and I would accept commissioner Sten's suggestion as a friendly amendment. The other thing, though, that this acknowledges, following up on my earlier question about the fees, is the door's already open. So this acknowledges that the door's already open. And I want some more structure around the fact that the door's open, whether we like it or not. This \$250 to go through ballot measure 37 process, and it's up to -- you know, \$2800 in an e zone, where most of these claims are being filed right now. So I want some structure around how we deal with this reality of an unintended consequence of the doors 3/4 of the way open now.

Kelley: It's open, but still has measure 37 sideboards on it, I mean restrictions on it. I hope this doesn't send a message, even inadvertently.

Adams: The comfort you take, the solace you take, is very illusory. They can go directly to circuit court.

Kelley: Right. We have 10 claims, and we sort of know how we're going to deal with those. I hope this doesn't engender hundreds more just because --

Potter: I would prefer to consider this at a later time, because having just got this message -- or this amendment here at city council, this amended version, I'd prefer that the city council give some thought to that and to consider some of the ramifications of the amendment.

Adams: Well, I respectfully disagree. I've been talking to staff about this since my election, and have been talking to the staff that have been working directly on this. I've asked them to come forward with their thoughts on this and to have an opportunity for council discussion. So the amendment today doesn't do anything other than direct staff to come back with the policy options implications, and I think that will allow and give me some assurance that the discussion will indeed come back to council within a time certain period.

Kuhn: If I may, I want to echo what you've heard from the two people sitting beside me, that we're open to the notion of negotiating directly with claimants about how we might resolve their claim in a way that meets their needs and protects the city's interests as well. So I think in that respect this is not an unfriendly suggestion that you're making. I would like to say that I'm hoping very much that I will have an opportunity to consider the conversation that we began yesterday evening in executive session about some very specific policy questions that will help me move forward with

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claims, knowing where the -- where the council -- how the council feels about particular issues and particular risks, and positions that they would like to take that we can't discuss in this forum today. And that that will hopefully be able to be dovetailed with a discussion about negotiation and how that should be structured. I think those two conversations are necessarily related to each other, and will help inform each other.

Potter: Any other discussion?

Saltzman: I was going to suggest, perhaps, can we set this over a week, since we're taking the second vote -- or the second reading of the ordinance? Seems like -- i, like the mayor, I didn't see this until 5:00 tonight, and I guess i'm a little -- I mean, it sounds good, but i'm a little concerned about some of the dialogue, or exchange that's been going on, that it needs more processing, and that we come back and deal with these a week from today.

Adams: I'm fine with that.

Potter: Ok.

Adams: Uh-huh.

Potter: So, Karla, what do we do here?

Leonard: Go home. Adjourn. [laughter]

Moore: You have a motion on the table that's been seconded.

Potter: We have a motion on the table that's been seconded. Do you want to have that motion withdrawn and simply have these amendments to be considered as you carry forward the resolution until next week?

Saltzman: That's what we want to do.

Potter: Is that --

Adams: As long as it's considered next week, yeah. I want to have this discussion.

Beaumont: I think the council has your proposed amendments. It would make sense to have those adopted after -- two weeks.

Potter: Mr. Saltzman is gone next week.

Moore: We don't have any time certain next week. I've already checked.

Potter: Two weeks?

Adams: That's fine with me.

Moore: 3:00.

Potter: So withdraw the motion. Do we have to withdraw the second as well?

Moore: The 30th.

Meng: The motion is sufficient.

Potter: Ok.

Adams: I withdraw the motion.

Leonard: I won't withdraw my second. [laughter] I just like being difficult.

Adams: Must be this side of the bench.

Saltzman: Sam's rubbing off on me.

Potter: Ok. This is --

Kuhn: Karla would like me to say, we would runner, time certain, 3:00 p.m. On march 30.

Potter: 3:00 p.m. On march 30.

Kuhn: Yes. That's a wednesday.

Potter: Ok.

Adams: You have to hit that. [gavel pounded]

Potter: We're adjourned.

At 7:10 p.m., Council recessed.

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Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

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Potter: I'd like to hear a suspension of the rules to hear item 215 first. Oops. Roll call. [roll call] [gavel pounded] now, suspension of the rules to hear item 215 first. This is a vote only. Is that correct? Did you wish to --

*****: Yeah.

Moore: I should read the item.

Item 215.

Eric Engstrom, Bureau of Development Services: Good afternoon, mayor Potter, commissioners. I'm with the bureau of development services. I'm here just to bring back the final findings. You heard this and voted tentatively in february, and I believe you already have copies of the findings. If you don't, let me know, I have extra copies here. I did want to make one technical correction, on page 17 of the findings, i've left a replacement page with you that shows that we warn to strike out one line in the decision and replace it basically we didn't reference the correct exhibit in the findings, so we want to make sure we're referencing the correct exhibit that shows the revised site plan you voted to approve.

Potter: Council has before them findings. I need a motion to adopt the findings and deny the appeal and modify the hearings officer's decision to approve the project for a five-lot subdivision subject to the alternative plan that provides access to the site via one driveway off of southwest montgomery.

Adams: So moved.

Saltzman: Second.

Adams: Thanks to the development team for your willingness to work with this. I think you've got a really good product here. Aye.

Leonard: Aye.

Saltzman: Good work to our staff and to the citizens and to the property owners. Aye.

Sten: Good job. Aye.

Potter: Aye. [gavel pounded] Karla, please read the next item.

Item 213.

Potter: The city attorney, please describe the hearings and how it will be conducted.

Frank Hudson, Deputy City Attorney: Good afternoon, everyone. Welcome to council chambers. Today's hearing is an on the record hearing. That means you have to limit your testimony to material and issues on the record. That means that during this hearing you can only talk about the issues, testimony, exhibits and other evidence that be -- that will be heard at the earlier hearing. You can't bring up anything new. This hearing is designed only -- correct decision based on the evidence that was presented to him or her. If you start to talk about new issues or try to present new evidence today, you may be erupted -- interrupted and reminded you must limit your testimony to the record. The order of testimony will be as follows. We will begin with a staff report from b.d.s. For approximately 10 minutes, following a staff report, the city council will hear from interested persons in the following order. The appellant, that's the person who is appealing, will go first and have 10 minutes to present his or her case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. This

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three-minute time limit applies regardless of whether you are speaking for yourself or on behalf of an organization such as a business association or neighborhood association. The principal opponent, which is usually the applicant, will have 15 minutes to address the city council and rebut the appellant's presentation. After the principal opponent, the council will hear from persons who oppose the appeal. If there is no opponent, the council will move directly to testimony from persons who oppose the appeal. After supporters of the appeal conclude their testimony. Again, each person will have three minutes each whether you are speaking for yourself or on behalf of an organization. Finally, the appellant will have five more minutes to rebut the presentation of the opponents of the appeal. Council will then close the hearing and deliberate. After the council has concluded its deliberations, council will take a vote on the appeal. The vote is tentative, 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 council. If you wish to speak to the city council on this matter and have not yet signed up on the list outside the council chambers, please sign up at this time with the council clerk. Finally, I'd like to go through the scope of testimony for on the record hearings. Again, this is an on the record hearing. It is not an evidentiary or what's known as a de novo hearing. You must limit your remarks to arguments based on the record compiled by the hearings officer. Presenting your argument it is permissible to refer to evidence that was previously submitted to the hearings officer. It is not permissible to submit new evidence today that was not submitted to the hearings officer. The planning staff and I will be listening carefully to your argument, and if it strays from the evidence or issues presented at the initial hearing, I may interrupt and remind you that you must limit your argument to issues in evidence in the record. Your argument includes new evidence or issues, the council will not consider it and it will be rejected and 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. Council will provide a time at the end of the hearing for everyone to offer this kind of objection. Finally, under state law, only issues which were raised before the hearings officer may be raised in this appeal to city council. If you believe another person has raised issues today that were not raised before the hearings officer, you may object to council's consideration of that issue. Again, the council will provide a time at the end of the hearing for everyone to offer an objection. Thank you.

Potter: Do any members of council wish to declare a conflict of interest? No council members have a conflict of interest to declare. Do any members of the council have any ex parte contacts to declare or information gathered outside of the hearing to disclose? No council members have ex parte contacts to declare. Do you have questions or preliminary matters that need to be addressed before we begin the hearing? Let's begin the hearing. First we'll have the staff report.

Douglas Hardy, Bureau of Development Services: Thank you, mayor Potter, council members. For the record, Douglas Hardy, bureau of development services. The applicant has requested a zoning map amendment from CO2 to CxD. This request is in conformance with the central commercial comprehensive plan designation that has been on the site since 21. The existing CO2 zone -- office zone that also does allow housing, retail uses are limited to 10% of the total floor area of the office building on the site. The CO2 zone would allow approximately 55,000 square feet of commercial space on this site at a maximum building height of roughly 45 feet. The proposed CxD zone allows wide variety of uses, including office, retail, and housing, and is intended to allow development of the city's most urban and dense areas. Cx zone allows roughly double the amount of floor area as would the CO2 zone, up to a maximum building height of 75 feet. There is no maximum floor area for housing in either the CO2 zone or the proposed CxD zone. The D overlay, or the design overlay zone is basically would require design review for any subsequent development that occurs on the site. The applicant in this case has indicated a specific use for the site. If the CxD zone is approved. That specific use would be limited to a maximum of 80 dwelling units and up to

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10,000 square feet of office or retail uses. The hearings officer's report approved the zoning map amendment to the cxd zone and that approval was appealed by the corbett terwilliger lair hill neighborhood association. This is a view of the site. It's currently a vacant site, made up of six tax lots having a total area of 27,500 square feet. The site is indicated here is surrounded on four sides by public streets, southwest water, southwest baker, southwest corbett, and southwest arthur. All the streets are currently fully improved except for southwest baker to the north of the site. That is basically a dirt, gravel road. The site is what I consider to be a small pocket of the corbett terwilliger lair hill neighborhood. It's east of front avenue, south of the elevated i-405 viaduct and north of southwest kelly avenue. The site currently is zoned co2, as are the surrounding properties basically within that pocket that are described. Also it should be noted that all those surrounding properties also have the cxd comprehensive plan designation. Outside the immediate area to the south and southwest are existing cxd zones and a mixture of high and medium density residential zones that can also be found to the south of the site. And as indicated previously, the entire site is being proposed to go to the cxd zone. Just for a quick tour of this site and vicinity, this is a view looking northwest into the site from southwest arthur with southwest corbett to the right. As seen here the site is vacant with its topography rising fairly significant up from the street. Traveling to the -- this would be the north side of the site. This is a view looking southwest into the site from corbett. This photo to the right is southwest baker, the only unimproved street that abut the site. This is a view standing at the northwest corner of the site, roughly at southwest water, and the house that you see here in the slide is one of the five lots on the block that are not owned by the applicant and are not part of the proposed cxd zone. And then along southwest arthur, along the southern portion of the block are the remaining four lots that are on the block that are not owned by the applicant and are not proposed for the cxd zone. In terms of the immediate vicinity, the area is predominantly characterized by two types of development. The first type of development consists of smaller-scale, one- to two-story office buildings, as seen here. This is immediately east of the site. Roughly one to two block vicinity of the site there are a total of eight similar office buildings of this scale with surface parking associated with those office buildings. And then the second type of development in the immediate vicinity is basically consists of small-scale, low-density housing, housing within a one- to two-block radius of the site is basically limited to southwest water as seen here, and the north side of southwest arthur. And then other key landmarks in the area as well as elements that define the boundaries of this particular area include the elevated i-5 viaduct to the east of the site, the elevated i-405 viaducts to the north of the site, and then southwest kelley, that runs along the south area of the vicinity. For zoning map amendments to be approved, the applicant is required to demonstrate that the approval criteria in 33.855.050 of the zoning coat are medium -- code are met, and only the criteria dealing with the adequacy of services is relevant to this particular review, and to meet this criterion the applicant must demonstrate public service is related to water supply, transportation, police and fire, as well as sanitary and storm water disposal or adequate to serve either the uses -- to serve use and densities aloud -- allowed under the proposed base zone or serve a specific use if proposed by the applicant. And in this case as indicated briefly earlier, the applicant has proposed a specific use for the site consisting of the 80 maximum dwelling units and up to 10,000 square feet of office and retail. The city service bureaus determined the adequacy of public services based on this limited proposal and the five bureaus identified here, all determined that services are in fact adequate to serve a development of the size proposed by the applicant. And the hearings officer found the proposal also met the criteria and -- he did condition the approval on a maximum build-out of the 80 dwelling units and maximum of 10,000 square feet of office and retail. The corbett terwilliger lair hill neighborhood appealed the hearings officer's approval of the zone map amendment. The three central points in the neighborhood's appeal include that number one, the applicant did not submit a specific development proposal, and because of that the adequacy of public services must be based on the most intense development that could be allowed under the

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proposed cxd zone. In response, b.d.s. would just note the applicant as previously mentioned did identify specific use of the 80 dwelling units and 10,000 square feet of office and retail. And the -- this particular proposed density is significantly less than that allowed outright in the proposed cxd zone, and in fact the applicant specifically limited the development in order to address the adequacy of public services. The second basis for appeal from the neighborhood association was that the hearings officer did not adequately consider the frequency of traffic accidents that occur in the area. The hearings officer did consider the traffic impact analysis that was prepared by the applicant, and in that impact analysis the traffic analysis did compare the number of cars coming to and from the site under development allowed by right under the current zone and compared that to the number of vehicles that would be coming to and from the site under the proposed limited development scenario. And the impact analysis concluded that the applicant's limited development scenario would result in 1,96 fewer vehicles coming to and from the site under this limited development scenario than would be the case if somebody developed out under the worse case scenario under the co2 zone. And this finding was confirmed by Portland office of transportation. Finally, the third basis for appeals by the neighborhood association was that the requested cxd zone basically relates to a spot zone that is inappropriate in a residential area. In response b.d.s. notes the requested zone is in compliance with the comprehensive plan map amendment, which is already on the site. That designation was placed on the site by city council in 2001 as part of the southwest community plan.

And also, the surrounding lots and blocks already have either the cxd comprehensive plan designation on them or they are currently mapped with the cxd zone as seen in the previous zone map amendment. Also it should be noted that the purpose for the land use review is clearly stated in the approval criteria in the zoning code, is not to determine whether the existing comprehensive plan map designation is appropriate for the site, but rather whether the public services are adequate to serve development under the proposed cxd zone. And given that the council has three alternatives, that is to deny the appeal and uphold the hearings officer's decision to deny the appeal but modify the hearings officer's decision, or to uphold the appeal, thereby overturning the hearings officer's decision and thereby denying the requested zone map amendment. And that concludes staff's presentation. If you have questions, i'd be happy to take them now or later.

Adams: So the -- so that I understand, approval is contingent upon limiting the development to the 80 residential units and 10,000 square feet of business footage. Right?

Hardy: Right.

Adams: So this person having getting the zone change, could not or could, he or she sell the property with the new zone and build something else?

Hardy: Right. If in that sense the current applicant or any other future applicant wanted to build something more intense than this, they would have to come back through the zone map amendment process and come before the hearings officer again to modify that condition of approval.

Adams: Thanks.

Saltzman: Is there a height limitation?

Hardy: For the cxd zone there's a 75-foot height limit, and that compares to a 45-foot height limit under the existing co2.

Adams: That wouldn't change? That doesn't change the height limit?

Hardy: Under the approval by the hearings officer, no, they would still be allowed up to the 75 feet.

Potter: You mentioned this zoning was part of southwest community plan and that the council approved that plan in 2001?

Hardy: Right.

Potter: Was the corbett terwilliger lair hill neighborhood involved in that discussion?

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Hardy: I may let the neighborhood association address that one so I don't get into trouble, but the southwest community plan was a long city process. I don't know how many years, in fact, it took, but it involved extensive public input from across the southwest community area.

Potter: Thank you. Any other questions? Thank you. We'll now hear from the appellant. Please come up to the witness stand. Thank you for being here. You have 10 minutes, and please state your name for the record.

Constance Crooker: Good afternoon, i'm constance crooker, and for those of you who might recall that I used to practice law, I am not here appearing as an attorney. I'm retired now, happily, and not insured. But I am -- [laughter] but I am a member of the corbett terwilliger lair hill neighborhood association board, so I am appearing in that capacity. The issue that was raised first in our appeal is the issue regarding the fact that no specific development proposal was submitted by the developer. And you'll notice that i've cited a case just versus the city of lebanon, which says that a city must consider the impact of a specific development proposal on public facilities on the adequacy of public facilities before making these changes, if there is going to be some kind of a limitation, a specific proposal. And that's what we have here. They're saying that they don't want the -- an evaluation by the city agencies under the right to build fully under a cx zone because they knew they weren't going to get that past. And so they limited it to 80 units and 10,000 square feet of commercial, but our position is that is not a sufficient specific development proposal. Let me walk you through how I see it that way. The builder had a preapplication conference last summer, and he was told by mr. Hardy on page one of the preapplication conference summary report, which is part of the record, regarding a zoning map amendment, mr. Hardy informed them that the applicant can submit a specific development proposal with the zoning map amendment application.

The city would determine if service were adequate to support the specific project. An approval would be conditioned to that specific development. And then on page 10, I believe, of that report, it shows what a specific development proposal should look like. And there's a sheet here, page 10, that says site or specific -- site or development plan, if a specific development is proposed. And there's a list of things that must be presented for the various city agencies to determine the adequacy of public services, because they have to know these things ahead of time to decide if the public services are going to be adequate. And it has all property lines with dimensions in total lot area, north arrow, scale of drawing, adjacent streets, access, driveways, cubs, sidewalks and bicycle routes, existing natural features, etc. All trees greater than six inches in diameter, the easements and on-site utilities, existing and proposed development with all dimensions, building elevations, location of adjacent buildings, distances of all existing and proposed development property lines, types and location of vegetation, etc., percentage of the site proposed for building coverage and landscaping coverage. Motor vehicle and pedestrian access, circulation systems, etc., motor vehicle and bicycle parking areas, and there's more there, bus routes, and stops and pull-outs and transit facilities. And it's additional requirements. So these are all the kinds of things that the city should have considered before deciding on the adequacy of services when the fire department and the police department and the transportation department look at this, they should have known all these details. All they knew was this developer wanted to build the most they could possibly build with only two limitations -- 80 units and 10,000 square feet limitation on the commercial. So they didn't have a sufficient factual basis to decide that the services were adequate, because no specific development proposal was ever given to them. This is exactly what the case of just versus the city of lebanon talks about that i've cited in our appeal that the city must consider the impact of a specific development proposal on the public facilities before granting in that case it was an annexation, but they also talk about zone changes before granting a zone change. That's a recent case as of last spring, and I think it's right on point. So it's our position it was error for the hearings officer to conclude that the public services were adequate to serve the proposed uses, since we don't know in enough detail what those proposed uses might be. The other two points we raised are

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regarding the factual finding as to the traffic in the area. And then the third issue I think -- I take issue with the way the city presented it here. The third issue is really a question of whether the hearings officer looked sufficiently at policy considerations or did he only address procedure. And so those are the second two issues that we raised. As far as the traffic goes, I'm the neighbor that testified at the hearing below, and I live right on -- when you're coming off the Ross Island bridge and heading towards downtown you look to the left and see a house that's -- that sits up on above the cement retaining wall and it's got a diagonal cut-off to the window, a lot of people notice that house because it's pretty noticeable, and I look out across Kelley and down toward those four Victorian houses that were shown in the picture, and this lot, where this proposal is going to be. Proposed building will be. And as the cars come off from the Ross Island bridge, they -- there are a lot of accidents there. And a lot of them are unreported because they're noninjury accidents. They're fender benders, they're slowing down for the stop light at first and Arthur, and there are so many different streets coming in at odd angles and blocked vision, and some of the areas, and they're coming fast up from having come off of I-5 and coming off of the Ross Island bridge and having to slow down, and merge, and change lanes, and it's just a constant fender bender area out there. I've gotten to where I don't even jump up and look out the window if I hear a crunch of a certain size that I know is so little that nobody's going to care, they're just going to deal with it themselves. If it's a big crunch I go look out the window and see whether we need to call for an ambulance. So that's how frequently, and I've been there, my house has been there, that I've owned since the early 1970's. And it's really -- it's a mess out there. So the question from my point of view isn't really, you know, the comparison of the traffic under the proposed zone as to compared to the worse case scenario, which is what was presented to the -- the worse case scenario under the present zoning, which was presented, the question is just the reality of how many more cars are going to be in there, and we don't know because we don't know, for example, with 80 units are they going to allow -- is it going to be a fancy development where they get two parking spaces and maybe there's 160 cars? We don't know how many cars will be allowed in there to be coming in and out of that little neighborhood. With really only one street that can access that very, very busy Kelley. So it's a genuine real problem there. As far as issue number three goes, that, as I say, that's an issue where I think the hearings officer looked only to procedure and the technical aspect of, did they paint by numbers and follow the dots here, or -- and we are saying that they should look at the overall impact on the neighborhood. What we have here is a lovely old neighborhood with these old houses, Victorian houses that used to be in ruins, but they've all been fixed up. And in the time that I've lived there, people have done a lot to maintain them and fix them up, and we're kind of as a neighborhood association, trying to hold the boundary so that downtown area doesn't come in and gobble us all up. Until these buildings someday will be, you know, sold, they'll be hopeless, but everybody keeps fixing them up and they're marvelous, and it's a wonderful addition to the city to have so close to downtown all these Victorians right there. So that's hour over -- our overall concern, to keep the neighborhood the way we see it, and hold the line from overdevelopment into our residential area. Any questions?

Adams: What was there before?

Crooker: In the lot? You know, I don't remember. I only remember the old Victorian house that's are right on the same lot.

Adams: Since you've been there in the 1970's it was a blank lot?

*****: [inaudible]

Crooker: There wasn't anything big. It was behind the houses, I just look at the Victorian house and I don't recall looking at anything bigger sticking up behind them ever. There was all nice neighborhood-looking view out there. Any other questions?

Potter: Thank you. We will now hear -- we'll now take testimony from supporters of the appeal. Has anyone signed up to testify in support of the appeal?

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Moore: Yes.

Laura Campos: My name is Laura Campos, 3419 Southwest First, and just regarding the Southwest community plan, my recollection is that the neighborhood didn't favor expansion of the central city zoning south of I-405. But that site used to have as I recall, just a low building called the DeSeekle building. That was demolished a couple of years ago. Let's see. I wanted to speak about the specificity. I don't feel if someone tells me there's 80 units, that's really specific, because at the hearing, the hearings officer said the real issue you want the zone change is to get the height, because it goes from 45 feet to 75 feet. If you figure it's going to be seven stories high and you got 80 units, those are going to be really huge units. I mean, you could count on maybe three or four people per unit, so you could be looking at 320 cars added to that area. But again, as I say, without the specificity, it's really hard to gauge what the adequacy of the facilities are. And I've been attending the budget hearings and I know there's this really call for fiscal responsibilities, and I think we need to look at this kind of development, because we're recommending increased use of public funds, and I don't think we have it. We need to start looking a little closer at the planning bureau, who needs in my opinion to be reigned in and deal with reality as Commissioner Leonard so well worded in a perfect world we could fund everything, but it's not a perfect world, and we have to live within our means. I think that's basically -- one of the reasons our neighborhood has been arguing against central city zoning for a long time. This is just a further chipping away at my neighborhood. In addition to the waterfront, which is a lost deal. Along with fiscal responsibility is my further concern about the double standard, where we're closing down schools and community centers, but we always find funding for additional heavy development, which is going to call -- there's going to be -- need to be a lot of improvement to the streets around that area. That's something I haven't seen in any present budgets, the improvement of those streets to accommodate that increased traffic. And so I would question the office of transportation in terms of saying that there's adequacy of facilities for that area. Thank you.

Potter: Any questions? Thank you. We'll now hear from the applicant. Please come on up. Thank you for being here. You have 15 minutes, and please state your name for the record.

Ken Sanblast: For the record, Ken Sanblast, you don't need my mailing address, right? Ok. I'm going to begin by saying some of the same things I said at the public hearing in front of the hearings officer, and that is that this applicant is particularly sensitive to some of the issues that the neighborhood has with regards to the spot zoning and compatibility as well as some of the traffic safety things. That's one of the reasons why you see this proposal presented as it is with the condition on it. It actually does provide certainty, contrary to testimony you've heard today and some of the written material you have from the neighborhood association. I know they're reaching for certainty with regards to the future and the development that could go there. There's some geotechnical concerns and some trip generation concerns, etc., but those relate to the future development of the site and those will be covered. There's requirements that the city has in their codes about the number of parking spaces based upon square footages, based upon numbers of units. It already states in the record to have an expectation for the improvements to the transportation system adjacent to the property frontages around the site that deal with things that happen in the future, and I know that doesn't satisfy all the concerns that may be raised, but this all happens in a progression order, and what we're dealing with is reaching ahead a little bit. Where we're really at is at the zone change phase of this development or future development of this property. The proposal before you is a zone change to match what the existing comp plan designation is for this site. The comp plan is a communitywide document that gets adopted and it reflects the community's desires as well as the city council's desires for what they'd like to see. It's a coming together for policies and goals. When you have that, there has to be a transition at some point between the goals and policies and down on to the ground with some certainty with regards to development and zoning. This particular property zoned as it is and comp planned another, then

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comes in and proposes a zone change and we have now the question of how to deal with making sure that the system's adequate. Given the comprehensive plan is already designated a higher intensity use in the current zoning, the different bureaus in the city are doing the planning at that level of designation. That's what the -- one of the things the comprehensive plan, one of the many things it does, provide the basis on which to do the transportation planning, facilities planning, and try to make sure that you have a cohesive and coordinated plan that reflects what the ultimate buildout of the city is going to be. So the system itself, with the bureau's doing their planning based upon a comp plan designation that's more intense than the existing zoning, accounts for some of the -- accounts for all of the additional density that may come from the future development of this property, particularly given the condition of approval that's on it as imposed by the hearings officer.

With all that said, what i'd really like to do is talk about the specific approval criteria, because that's really what we're here to talk about. And the first issue that was addressed by the -- by ms.

Crooker with regards to the development proposal issue really revolves around, and i'm referencing page six of the hearings officer's decision, dated december, it's page six. It's the language of the particular approval criteria. In there on the second sentence of that section it specifically says, service demands may be determined based on a specific use or a development proposal if submitted.

Given that approval criteria, a specific use proposal as your staff noted in their testimony was submitted. We submitted a specific use of this property, it was conditioned and we're fully aware as your staff testified earlier, that any change to that, whether by this applicant or future property owners, would be subject to further review and it would be another process that would be public review and the hearings officer's decision. So we've provided that certainty I spoke about earlier by providing a specific use. As the record establishes, this use is substantially less than what's allowed, not only under the cx zone that's requested, but under the existing zoning of the property right now. So we feel that we've provided the specific use just as a site note, we object to the reference of the just appeal. We believe that's way off point. It has to do with annexation and a specific city policy they have in their comprehensive plan, so we would object to that. We want to focus on this particular language that's approval criteria for this application. So I just -- I would state for the record that we did provide a specific use. It was submitted, it has been reviewed. It then further in that same paragraph goes on to say in the next sentence f. A specific proposal is not submitted, determination is based on city service bureau demand projections for the area. We submitted one. We provided traffic analysis for that proposal, for that specific use, and the bureau, particularly the bureau of transportation to address the concerns that were raised about traffic safety responded to that and the hearings officer found that the system is adequate. So with regards to the first use on the specific development proposal, it seems to be a little bit after mix-up maybe on terminology, but we provided a specific use proposal as part of this application, and in fact it got imposed as a condition of approval, which we're willing to accept and will fully accept to ensure that it's got certainty and definition to what's going to go there in the future. How big the units are, how tall the building is, some of those issues I spoke about earlier aren't really at issue at this time. The question is simply, primarily is there adequate services, and the hearings officer's decision found that there is. With regards to the neighborhood character issue, all I would say with that is that as I started to in the broader brush strokes at the beginning, the comprehensive plan was approved, and I think your staff is right, there was an extensive community involvement process for that, southwest community plan. This application -- this applicant is just complying with the zone change criteria and in accordance with the already designated comprehensive plan. We encourage, I encouraged at the hearings officer's level continue to work as a neighborhood to legislatively change that, if that's not something that's acceptable to the neighborhood. What this particular property owner is doing is complying with the zoning criteria and in compliance with the existing comprehensive plan. With that, I would just say we would request that you deny the appeal and

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uphold the hearings officer's decision as it's drafted without change, particularly we will accept the condition of approval on the use. I don't know if you have any questions for me.

Potter: Any questions? Thank you very much.

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

Potter: We'll now take testimony from opponents of the appeal. Is there anyone signed up to testify?

Moore: No one's signed up.

Potter: We'll now hear the appellant rebuttal. Please come up. You have five minutes. Please state your name for the record.

Crooker: Constance crooker. I just want to focus on one issue, and that is, was the proposal a specific development proposal, or not? When they said that they would limit it to 80 units and 10,000 square feet of commercial space. They were told at the preapplication -- in the preapplication conference summary report that they could, if they chose, submit a specific development proposal, and the approval would be conditioned to that specific development. And then they were told if the applicant chooses not to commit to a specific development, then the applicant must show that services are adequate to support the most intensive use development allowed in the cx zone. So if you consider that that 80 units and 10,000 square feet is a specific development proposal, then perhaps they've met their burden. But if it is not, then they -- the agencies should have a value -- should have evaluated whether the zone -- the zone change to cx should be allowed in that area with the worse case scenario of anything that could be built under cx. So then they were told on page eight, this list identified all the materials you must submit for your application to be considered complete. And then on page 10 is the list that we went through earlier of all of the criteria that would have to be submitted for it to be considered a specific development proposal. And so it's just our position that clearly that was never done, and so clearly the city agency review should have been under worse case scenario for cx zoning, and that was not done. Now, what they're arguing is that, well, after the fact, there's going to be -- there will be other times when the city comes in and looks at what we're doing, and we'll have to meet the criteria then. But that goes against the principle in the case of just versus city of lebanon, which says, no, put the cart after the horse. You have to know ahead of time before you change your zoning map what the specific proposal is, if you're going to go under a limited review of -- as was done here. So --

Adams: Could I ask a clarifying question?

Potter: Please.

Adams: Was the instructions to the applicant for either/or, the or being worse case scenario under the cx zoning, was that done before they had agreed to the limitations of the unit limitations and business square foot limitation?

Crooker: I believe that was. That was done in the preapplication summary report, which is dated in september. Then following that in october, they were sent a letter as to the information necessary to complete the application, and it says it appears from -- this is a letter from douglas hardy to mr. Sandblast, it appears from your application that no site-specific development is proposed as part of the requested zoning map amendment. And then he asks only for traffic analysis. He says therefore they should submit a traffic analysis impact. And -- but that's not correct. They should have submitted the full proposal as was outlined in the preapplication summary report. And so -- and then it goes to a letter of december 14 where mr. Hardy says that they -- at this point assuming the fire bureau c.s.o. Not have a problem with the proposal, our recommendation to the hearings officer will be for approval with a condition that development be limited to a maximum of 80 dwelling units and up to 10,000 square feet. So it sounds like that condition is a city condition, not a proposal from the builder. I don't even know where that came from, or who proposed it and when. It sounds like the city said, we're not going to give it to you, if you want a full cx zoning, but maybe

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if you limit it like this, we'll give it to you. So it doesn't sound like a specific development proposal to me.

Potter: Do you know if the corbett terwilliger lair hill neighborhood association participated in a 2001 southwest community plan?

Crooker: I was not on the board yet then, and I don't know that. Laura could answer, she's shaking her head yes.

*****: [inaudible]

Crooker: We were not in favor of it.

Potter: Thank you.

Leonard: So your position is that if the council finds that the combination of 80 units and 10,000 square feet is a specific development proposal, then the criterion was met with respect to agency input on the impact.

Crooker: You might find that. We're saying the criterion still weren't met specifically as to traffic, because they were wrong in their conclusions about that. But that's our second argument. But that at least you get over the hurdle in issue number one, and then --

Leonard: What would be more specific from your perspective in terms of a development proposal than 80 units and 10,000 square feet? What would that have been?

Crooker: On page 10 there's a list that I went through and -- when I first testified of what site or development plan f. A specific development is proposed. And there is a list of what they were supposed to submit. And it says on page eight, "this list identifies all the materials you must submit for your application to be considered." and here is one, checked box, submit four copies of -- this and is the specific proposal, and we've seen nothing that shows the height, the ppaddrtion of vegetation to building, all of these things. In is -- this says specific development proposed. So those are the things that should be in there to be considered.

Potter: Could we call back staff?

Hardy: Douglas hardy, b.d.s. As the applicant indicated, the approval criteria for zone map amendments specifically say service demands may be determined based on a specific use or development proposal. So there's two different things that they can submit, a specific use, or a development proposal. And this case the applicants identified a specific use, the 80 dwelling units and 10,000 square feet of commercial space. If an applicant were to submit a development proposal, then typically for an application they provide a site plan, you can see where the building footprint is, how tall the building is, that type of thing.

Leonard: Did you get that?

Hardy: No. Because again, in this case, the code leaves it up to the applicant to design, do you want to submit a specific development proposal, or to say specific development -- a specific use.

Leonard: The city attorney wants to weigh in.

Hudson: I might be able to assist council in addressing this issue. I believe that the appellants' argument that the applicant is required to submit a specific development proposal is based on the just decision. While she was talking I went up and got that decision. So the first question is to ask why did the court of appeals require the city of lebanon to have a specific proposal before them before they could approve it, and in order to answer that question, we have to look at the city of lebanon's land use regulation. And in that case, the land use regulations say specific development proposals shall be required for annexation requests. So the word "shall" is a term of art. It means mandatory. But lebanon was saying, well, even though it says "shall," we can still waive it, a specific proposal requirement. So the court said, no, it's mandatory. You need a specific development proposal.

Leonard: That's based on their own ordinance.

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Hudson: Exactly. When you contrast what the city's land use regulation says, service demands may be determined when a specific use or development proposal, the decision is really in opposite to the present situation. A specific development proposal as a matter of law is not required.

Leonard: Thank you.

Potter: Any other questions?

Saltzman: This development is subject to design review?

Hudson: The cxd, you can meet -- it will have to go through design review once a specific development proposal is submitted. They can either use the community design standards at time of building permit, or go through a discretionary design review, but in either case they would have some form of design review once a proposal was submitted.

Saltzman: Thank you.

Potter: Thank you.

*******:** What --

Adams: What is the neighborhood's opportunity during the design review process?

Hardy: If they go through a discretionary land use review would it go through a type two or type three process, depending on the value of the proposal of the development. And in either case there will be public notice and public comment period. If in fact it goes through the type three land use review process, there would be a public hearing before the design commission on that.

Potter: Any other questions? Thank you. Deliberation, discussion for the council. Any thoughts? I need a motion to make a decision.

Leonard: I move to deny the appeal and uphold the hearings officer's decision.

Saltzman: Second.

Potter: The motion is to deny the appeal, uphold the hearings officer's decision and adopt the hearings officer's decision is the council's final decision. And you seconded? Karla, let's take a vote on the motion.

Adams: I think the appellant has made a very spirited case for your appeal, and I appreciate the time and effort that went into it, although I find that it to be not fully persuasive, and so I vote -- aye.

Leonard: In fact, the last hearing we had like this a person from the development community accused the council of voting too often what the neighborhoods, and against the developers, which I suppose after reviewing some of the casings we've done i'd have to plead guilty. But I do believe in giving the neighborhoods the benefit of the doubt when there's a doubt. And -- which is -- goes to the nature of some of the questions I asked in seeing if I could discover or unearth a doubt. Unfortunately it seems like the law is pretty clear. Unfortunately from the neighbors' point of view, but i'm hoping that the developer is sensitive to the development and is -- takes into account the neighborhood's concerns and the design of the structure. Those kinds of actions go a long way to making neighborhoods feel better about what's built in their neighborhoods. Aye.

Saltzman: This zone change is fully consistent with our comp plan, and notwithstanding perhaps the neighborhood's opposition back in 2001, that is what our comp plan says today, and the only public service facility impact I could possibly foresee would be traffic impacts, and in reading the hearings officer's decision and the traffic department's analysis, it seems to say that the traffic generated by the 80 units and the 10,000 square foot retail are less than what would be if it were built out to the full commercial office designation under its current zoning. I find that to be pretty persuasive, that the traffic impact is not going to be more than what it would be if it was left to develop as it's currently zoned. Aye.

Sten: I think there were good arguments on both sides. It was a fair argument. My sense is that it does meet the standards for a zone change, and that there is enough specificity to be -- to meet the criteria that was outlined. I think the design overlay will give the neighborhood a chance -- the design will have to come through a much more rigorous process. There's a good argument, but the

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level of detail you're arguing comes in the next phase as opposed to the zone change, in my opinion, so i'm going to vote aye.

Potter: I concur with the commissioners. I really appreciate the neighborhood stepping forward. I believe that you folks made a great effort. I don't see that the ruling by the hearings officer was inadequate, so I rule aye. [gavel pounded] pass. The motion to deny the appeal passed. The appeal is denied and the hearings officer's decision is upheld. Karla, please read the 3:00 p.m. Time certain.

Item 214.

Potter: I need a motion that we tentatively vote to deny the appeal and ask that the staff return with revised findings to be voted on at a later date.

Leonard: So moved.

Adams: Second.

Potter: Take a vote on the motion.

Moore: Is this -- .

*****: [inaudible]

Moore: It's been withdrawn. Ok. This is the one that's been withdrawn. They withdrew their appeal.

Potter: Ok.

Adams: Thank you.

Potter: So there's no action required by the council. Is that correct?

*****: Just to say on the record that the appeal has been withdrawn.

Potter: Ok. The appeal has been withdrawn. I can be trained. City council is recessed until next week. [gavel pounded]

At 3:08 p.m., Council adjourned.