



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

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

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

Commissioner Adams arrived at 9:43 a.m.

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

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

COMMUNICATIONS		Disposition:
1431 Request of Cascade Anderson Geller to address Council regarding problems in Mt. Tabor Park and Portland Parks in general (Communication)		PLACED ON FILE
1432 Request of Don Jacobson to address Council regarding problems in Mt. Tabor Park and Portland Parks in general (Communication)		PLACED ON FILE
1433 Request of Michael Schindel to address Council regarding Bureau of Parks and Recreation (Communication)		PLACED ON FILE
1434 Request of Paul Phillips to address Council regarding Portland Police (Communication)		PLACED ON FILE
1435 Request of Graham Covington to address Council to ask for a ban on the use of cell phones while driving (Communication)		PLACED ON FILE
TIME CERTAINS		
1436 TIME CERTAIN: 9:30 AM – Direct all City bureaus and offices to take steps to prevent over expenditure of budgeted appropriations as directed by state statute (Resolution) (Y-5)		36355
*1437 Adopt budget adjustment recommendations and the Minor Supplemental Budget for the FY 2005-06 Fall Budget Adjustment Process and make budget adjustments in various funds (Ordinance) (Y-5)		179790

November 30, 2005

<p>*1438 Adopt the Fall FY 2005-06 supplemental budget in the amount of \$15,808,611 and make budget amendments in various funds (Ordinance) (Y-5)</p>	<p align="center">179791</p>
<p>1439 Adopt the Budget Calendar for FY 2006-07 (Resolution) (Y-5)</p>	<p align="center">36356</p>
<p>1440 TIME CERTAIN: 10:00 AM – Appoint Amy Cortese to the Portland Planning Commission for term to expire January 13, 2009 (Report) Motion to accept the Reports: Moved by Commissioner Adams and seconded by Commissioner Saltzman. (Y-5)</p>	<p align="center">CONFIRMED</p>
<p>1441 Appoint Youlee Yim You to the Portland Planning Commission for term to expire January 13, 2010 (Report) Motion to accept the Reports: Moved by Commissioner Adams and seconded by Commissioner Saltzman. (Y-5)</p>	<p align="center">CONFIRMED</p>
<p>1442 TIME CERTAIN: 10:15 AM – Appeal of Maplewood Neighborhood Association against Hearings Officer's decision to approve the application of Robert Whitaker to create a six lot subdivision with a new private street and stormwater management tract at 6726 SW 63rd Avenue (Hearing; Previous Agenda 1293; LU 04-094246 LDS AD)</p>	<p align="center">CONTINUED TO DECEMBER 7, 2005 AT 4:30 PM TIME CERTAIN</p>
<p align="center">CONSENT AGENDA – NO DISCUSSION Mayor Tom Potter</p>	
<p>1443 Re-appoint Richard Allan to the Adjustment Committee for a term to expire June 30, 2009 (Report) (Y-5)</p>	<p align="center">CONFIRMED</p>
<p>1444 Appoint Linda Dodds, Peter Meijer and Carrie Ritcher to the Historic Landmarks Commission for terms to expire December 1, 2009 (Report) (Y-5)</p>	<p align="center">CONFIRMED</p>
<p align="center">Office of Management and Finance – Bond Counsel</p>	
<p>*1445 Authorize line of credit for local improvement projects (Ordinance) (Y-5)</p>	<p align="center">179762</p>
<p align="center">Office of Management and Finance – Human Resources</p>	
<p>*1446 Change the salary range of the Nonrepresented classification of Commissioner's Staff Representative (Ordinance) (Y-5)</p>	<p align="center">179763</p>
<p align="center">Office of Management and Finance – Risk</p>	
<p>*1447 Pay claim of Raeann Suckow (Ordinance) (Y-5)</p>	<p align="center">179764</p>

November 30, 2005

<p>*1448 Pay claim of Chris Sagan (Previous Agenda 1379) (Y-5)</p>	<p>179765</p>
<p align="center">Office of Emergency Management</p> <p>1449 Accept donation from ComCast Cable of three TV/VCR/DVD combination sets to Portland Office of Emergency Management (Second Reading Agenda 1380) (Y-5)</p>	<p>179766</p>
<p align="center">Police Bureau</p> <p>*1450 Clarify and improve procedures for burglary alarm permits (Previous Agenda 1381; amend Code Chapter 14B.10) (Y-5)</p>	<p>179767</p>
<p>*1451 Authorize an Intergovernmental Agreement with Multnomah County District Attorney to provide investigators for the District Attorney Office (Previous Agenda 1382) (Y-5)</p>	<p>179768</p>
<p>*1452 Amend an Intergovernmental Agreement with Multnomah County District Attorney Office to reimburse the Police Bureau for providing Detectives trained in child abuse investigations in fiscal year 2005-2006 (Previous Agenda 1383; amend Contract No. 51581) (Y-5)</p>	<p>179769</p>
<p>*1453 Extend contract term and increase compensation to David Corey, Ph.D. for psychological examinations of community police officer applicants and employees (Previous Agenda 1384; amend Contract No. 35139) (Y-5)</p>	<p>179770</p>
<p align="center">Commissioner Sam Adams</p> <p align="center">Bureau of Environmental Services</p> <p>1454 Designate a portion of certain City of Portland property as a Storm Drainage Reserve and assign jurisdiction of said property to the Bureau of Environmental Services for the Tryon Creek Headwaters Project No. 7545 (Ordinance)</p>	<p>PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p>1455 Authorize agreement for acceptance of a donation of two riparian parcels from Port of Portland to the Bureau of Environmental Services for the Ramsey Refugia Habitat Enhancement Project (Ordinance)</p>	<p>PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p>*1456 Authorize contract with the lowest responsible bidder for the Riverview Pump Station Rehabilitation Project No. 5365 (Previous Agenda 1385) (Y-5)</p>	<p>179771</p>

November 30, 2005

<p>*1457 Authorize contract with the lowest responsible bidder for the Columbia Boulevard Wastewater Treatment Plant Outfall Line Repair Project 5831 (Previous Agenda 1386)</p> <p>(Y-5)</p>	<p align="center">179772</p>
<p>*1458 Authorize agreement for conveyance of the Fred Elsasser Property located in the Johnson Creek Floodplain to the Bureau of Environmental Services (Previous Agenda 1387)</p> <p>(Y-5)</p>	<p align="center">179773</p>
<p>*1459 Authorize an Intergovernmental Agreement with the Port of Portland, City of Gresham and others to share cost of joint legal defense activities related to Phase I National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permits (Previous Agenda 1388)</p> <p>(Y-5)</p>	<p align="center">179774</p>
<p>1460 Extend term and increase not to exceed limit for contract with CMTS, Inc. to supply qualified construction management, inspection and project support personnel (Second Reading Agenda 1389; amend Contract No. 35674)</p> <p>(Y-5)</p>	<p align="center">179775</p>
<p>1461 Authorize a contract and provide for payment for the construction of Tanner Phase 4B - Upper Burnside, Bureau of Environmental Services Capital Improvement Project No. 7625 (Second Reading Agenda 1390)</p> <p>(Y-5)</p>	<p align="center">179776</p>
<p>1462 Amend on-call services contracts with seven contractors for real estate and related environmental services for Combined Sewer Overflow and other capital projects to extend the contract to end June 30, 2006 (Second Reading Agenda 1391; amend Contract Nos. 33424 through 33430)</p> <p>(Y-5)</p>	<p align="center">179777</p>
<p>1463 Authorize grant application for co-generation facility at Columbia Boulevard Wastewater Treatment Plant to Energy Trust in the amount of \$500,000 (Second Reading Agenda 1392)</p> <p>(Y-5)</p>	<p align="center">179778</p>
<p>1464 Authorize grant application for co-generation facility at Tryon Creek Wastewater Treatment Plant to Energy Trust in the amount of \$50,000 (Second Reading Agenda 1393)</p> <p>(Y-5)</p>	<p align="center">179779</p>
<p align="center">Office of Transportation</p>	
<p>1465 Amend Interagency Agreement with the Portland Development Commission for 2005-2006 professional and technical services for transportation improvements (Ordinance; amend Contract No. 52477)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p>1466 Authorize the Director of the Portland Office of Transportation to execute agreements pertaining to sponsorships, donations, contributions and cost-sharing for transportation programs, services and projects in form acceptable to the City Attorney's Office and in amounts not to exceed \$150,000 per agreement (Ordinance)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>

November 30, 2005

*1467 Authorize agreement with Seattle Department of Transportation to assign to them up to four streetcar vehicle options (Previous Agenda 1398) (Y-5)	179780
1468 Amend contract with TriMet to extend term to July 30, 2006 for the Jobs Access targeted employment centers (Second Reading Agenda 1399; amend Contract No. 52168) (Y-5)	179781
1469 Authorize an Intergovernmental Agreement with the State of Oregon to accept a \$140,400 grant to construct a signalized pedestrian and bicycle crossing at East Burnside at 41st Avenue (Second Reading Agenda 1400) (Y-5)	179782
1470 Authorize agreement with Washington State Department of Licensing to access the state vehicle registration records to confirm current address, title dates and registration changes of licensed vehicle owners (Second Reading Agenda 1401) (Y-5)	179783
1471 Authorize use of the Eminent Domain Authority of the City to acquire certain permanent and temporary property interests necessary for completion of improvements to 102nd Avenue, between NE Weidler Street and SE Washington Street (Second Reading Agenda 1402) (Y-5)	179784
Commissioner Randy Leonard	
Water Bureau	
*1472 Authorize a contract with Raftelis Financial Consultants, Inc. for the development of a financial planning and water rate model (Ordinance) (Y-5)	179785
*1473 Amend contract with the Tri-County Metropolitan District of Oregon for the design and construction management services for the North Interstate Light Rail project (Previous Agenda 1407; amend Contract No. 51409) (Y-5)	179786
Commissioner Dan Saltzman	
Office of Sustainable Development	
1474 Authorize a \$35,000 Intergovernmental Agreement from Metro for the administration of the Master Recycler Program (Ordinance)	PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM
Office of Cable Communications and Franchise Management	
1475 Approve substitute of Comcast Corporation as guarantor of performance of cable franchises (Ordinance)	PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM

November 30, 2005

1476 Consent to transfer of franchised telecommunications facilities from Tyco Telecommunications (US), Inc. to WiTel Communications, LLC (Second Reading Agenda 1408) (Y-5)	179787
Parks and Recreation 1477 Accept a grant from Multnomah County in the amount of \$116,311 for operation of an integration program for senior citizens who have developmental disabilities (Second Reading Agenda 1409) (Y-5)	179788
1478 Authorize grants of five Portland school districts for out-of-school-hours youth programs (Second Reading Agenda 1410) (Y-5)	179789
REGULAR AGENDA Mayor Tom Potter	
*1479 Authorize lease for free office space for the Mayor's Vision Project at 827 Oregon Square (Ordinance) (Y-5)	179792
Office of Emergency Management 1480 Adopt revision to Basic Emergency Operations Plan as required by Title 15 of the City Code (Resolution) (Y-5)	36358
Office of Management and Finance – Bond Counsel *1481 Authorize Hydroelectric Power Revenue Refunding Bonds, Series 2005 Federally Taxable (Ordinance) (Y-5)	179793
Office of Management and Finance – Bureau of General Services 1482 Adopt an Operating Agreement for PGE Park between the City and Beavers PCL Baseball, LLC (Ordinance)	PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM
*1483 Authorize a contract and provide for payment to furnish replacement vehicles (Previous Agenda 1418) (Y-5)	179794
Office of Management and Finance – Human Resources	

November 30, 2005

<p>*1484 Approve a Settlement Agreement between the City of Portland and the District Council of Trade Unions, International Union of Operating Engineers Local 701 to resolve a grievance, L/ER File No. 2004-099, regarding compensation for two employees of the Water Bureau (Ordinance)</p> <p>Motion to accept amendment to state that the Settlement Agreement is between the City of Portland and the District Council of Trade Unions, IUOE 701: Moved by Commissioner Sten and seconded by Commissioner Leonard. (Y-5)</p> <p>(Y-5)</p>	<p align="center">179795 AS AMENDED</p>
<p align="center">Office of Management and Finance – Revenue Bureau</p> <p>1485 Amend contract for Downtown Business District Management Services between the City and Portland Downtown Services, Inc. (Ordinance; amend Contract No. 51730)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p>1486 Amend Pay and Park Facilities in regards to ticketing and booting on Private Parking Lots (Second Reading Agenda 1420; replace Code Section 7.24.020)</p> <p>(Y-5)</p>	<p align="center">179796 AS AMENDED</p>
<p align="center">Office of Management and Finance – Purchasing</p> <p>1487 Revise the regulations for the disposition of City surplus personal property (Ordinance; replace Code Sections 5.36.001, 5.36.010, amend Code Section 5.36.025 and repeal Code Section 5.36.011)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p align="center">Portland Development Commission</p> <p>1488 Approve the application of Gateway Towers, LLC for a ten-year property tax exemption for a Transit Oriented Development project (Resolution)</p> <p>Motion to accept amendment to add BE IT FURTHER RESOLVED that by June 1, 2006, the Portland Development Commission staff shall report back to the Council on the prices at which the condo units will be marketed, once those prices have been determined by the developers: Moved by Commissioner Leonard and seconded by Commissioner Adams. (Y-5)</p> <p>(Y-5)</p>	<p align="center">36359 AS AMENDED</p>
<p align="center">Commissioner Sam Adams</p> <p>1489 Create an effective strategy for the management of invasive plant species (Resolution)</p> <p>(Y-5)</p>	<p align="center">36360</p>
<p align="center">Bureau of Environmental Services</p> <p>1490 Establish goals, guiding principles and program directives for the Clean River Incentive and Discount Program (Resolution)</p> <p>(Y-5)</p>	<p align="center">36361</p>

November 30, 2005

*1491 Amend agreement with Portland Streetcar, Inc. to provide design and other professional services for the Portland Streetcar Lowell Extension Project (Previous Agenda 1423; amend Contract No. 31428)	CONTINUED TO DECEMBER 7, 2005 AT 9:30 AM
*1492 Amend contract with Stacy and Witbeck, Inc. for the construction of the trackslab, track drains and other minor civil elements on a segment of SW Moody and SW Bond Avenues between SW Gibbs and SW Lane Streets (Previous Agenda 1424; amend Contract No. 35163)	CONTINUED TO DECEMBER 7, 2005 AT 9:30 AM
<p style="text-align: center;">Commissioner Randy Leonard</p> <p style="text-align: center;">Water Bureau</p> <p>*1493 Amend contract with Ant Hill Marketing to develop a marketing campaign for the Regional Water Providers Consortium (Previous Agenda 1406; amend Contract No. 35099)</p> <p>Motion to accept amendment to correct number four to \$52,591 and council directives b, the words and FY 2006-2007 are deleted, it reads the Commissioner of Public Safety and Auditor are authorized to withdraw and deliver checks to water bureau's FY 2005-2006 budget: Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-5)</p> <p>(Y-5)</p>	<p style="text-align: center;">179799 AS AMENDED</p>
<p style="text-align: center;">Commissioner Dan Saltzman</p> <p style="text-align: center;">Children's Investment Fund</p> <p>1494 Amend Intergovernmental Agreement with Portland State University for evaluation related technical assistance services (Ordinance; amend Contract No. 35298)</p>	<p style="text-align: center;">PASSED TO SECOND READING DECEMBER 7, 2005 AT 9:30 AM</p>
<p style="text-align: center;">Office of Sustainable Development</p> <p>1495 Authorize an Intergovernmental Agreement for \$45,000 from Metro to help fund an outreach program to support a standardized recycling system for multifamily complexes throughout Portland (Second Reading Agenda 1427)</p> <p>(Y-4)</p>	<p style="text-align: center;">179797</p>
<p style="text-align: center;">Parks and Recreation</p> <p>*1496 Authorize a contract extension with Bottling Group, LLC, dba The Pepsi Bottling Group for the sale of beverage concession items at various parks, community centers, swimming pools and golf courses for four additional months (Previous Agenda 1429; amend Contract No. 51245)</p> <p>(Y-5)</p>	<p style="text-align: center;">179798</p>
<p style="text-align: center;"><u>FOUR-FIFTHS AGENDA</u></p>	

November 30, 2005

Commissioner Erik Sten

Fire and Rescue

1496-1 Adopt the Bureau of Fire, Rescue and Emergency Services 2005-2010
Strategic Plan (Resolution)

(Y-5)

36357

At 1:40 p.m., Council recessed.

November 30, 2005

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **30TH DAY OF NOVEMBER, 2005** AT 2:00 P.M.

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

Commissioner Adams arrived at 2:17 p.m.
Commissioner Leonard arrived at 2:19 p.m.

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

Agenda Item 1493 through 1496 were continued from the morning session.

		Disposition:
1497	TIME CERTAIN: 2:00 PM – Accept staff report and recommendation for Lowell Patton Measure 37 Claim (Report; Claim No. 05-138016 PR) Motion to uphold the staff's recommendation and deny the claim: Moved by Commissioner Sten and seconded by Commissioner Leonard. (Y-5)	STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED
1498	TIME CERTAIN: 3:00 PM – Accept staff report and recommendation for Dean A. Grudzinski Measure 37 Claim (Report; Claim No. 05-126994 PR) Motion to accept the staff report: Moved by Commissioner Leonard and seconded by Commissioner Sten. (Y-5)	STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED

At 3:47 p.m., Council recessed.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

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

December 1, 2005

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **1ST DAY OF DECEMBER 2005** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Adams, Saltzman
and Sten, 4.

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

	Disposition:
<p>1499 TIME CERTAIN: 2:00 PM – Appeal of Hayhurst Neighborhood Association against the Hearings Officer’s decision to approve the application of Michael and Rita Wallace to create a four lot subdivision, a common green and an environmental resource tract at 3609 and 3617 SW Cullen Blvd (Hearing; LU 05-128857 LDS EN)</p> <p>Motion to tentatively deny the appeal and uphold the Hearings Officer’s decision with the following modifications: 1) Add a condition to clarify that the natural resources tract cannot be developed in the future. 2) The proposed land division plan will be modified to straighten out the line between the natural resources tract and Lot 4. 3) Add a condition (if necessary) to assure that the required bond is sufficient to pay for the required mitigation and monitoring. 4) Add a condition that requires a minimum of 5 additional trees to be planted in the additional planting area behind Lot 4: Moved by Commissioner Adams and seconded by Commissioner Sten. (Y-4)</p>	<p>TENTATIVELY DENY APPEAL AND UPHOLD HEARINGS OFFICER’S DECISION WITH MODIFICATIONS; PREPARE FINDINGS FOR DECEMBER 7, 2005 AT 4:45 PM TIME CERTAIN</p>

At 3:42 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

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

November 30, 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.

NOVEMBER 30, 2005 9:30 AM

Potter: This is the Portland city council. We traditionally start off wednesday mornings by talking about our children and our young people. And ask the question, how are the children? We know that there are communities around the world, that when they walk past each other and greet each other, instead of saying, hi, how are you, they ask how are the children today. We ask that same question of our community and of ourselves as we make public policy and spend taxpayer dollars. And we invite experts in to talk with us. We have a great person today, nicole. Nicole, could you come up, please? Nicole is currently a junior at open meadows. She's in the crew program. You'll see her t-shirt. That stands for core restoring the urban environment at open meadows, and has been there for one year. Nicole enjoys reading and computers, and is very passionate about the pros and cons of public schooling. Nicole, thank you for being here. What would you like to share with the city council today?

Nicole Heine: Hello, my name is nicole. I've been attending crue for two trimesters. Learning has been made more enjoyable with the smaller classes. I've gotten a better education from that. However, today i'm not here to talk about open meadow crue, i'm here to talk about the problems that I see in the other public high schools. So some of the problems that are in these public high schools, is I see there's not very much respect for teachers. And because of this, there's a lot of disruptions in the classrooms, and not all the kids can handle these situations, so they're becoming distracted because of all these other kids causing these problems, and this becomes a distraction for students and their learning process. Some of the causes of disrespect is just not because the parents and their upbringing, or the teacher's ability to handle the kids, is that the classes are a bit too big for the teachers to really have control over them. And also that the teachers have these kids day after day, but not many of the students make relationships between these teachers. So there's really no reason these kids see to have respect for these teachers. So another approach to this is to offer more after-school help. Regular teachers might be busy after school, so having individual help after school is not as easy. So I propose that there should be programs to hire teachers or newer teachers in the system that could help as an after-school program for students as a resource for help. The mission statement of this would be to create a learning friendly environment with less distraction and more help for students. The benefits of this, students have a safe, comfortable learning environment, teachers can send home students that are causing a disruption and being disrespectful. Students have more resources if they need it, and support for projects, tests, and other things like that. A current program right now that's having -- that's happening at after-school at roosevelt is step-up, and what they do is they are targeting incoming freshman. And they help them with tutors and building relationships with these students so they have a place to go and get help when they need it for class work. So my final conclusion is that there's a problem developing from these classes which are too big. There's a lot of disruptions, disrespect, and then there's just some students that just aren't getting enough help. And because of this, kids are going to struggle. If there's not enough help, help offered to the students, they're going to continue to struggle and fail. So I propose that more -- some funds should be put in either expanding programs like step-up or creating sister/brother programs to it that would aid these students having issues with bigger classrooms. So not only do the students be able to stay at the same school, they'd be able to build

November 30, 2005

these relationships with teachers that would allow them to work better in school. And if anyone has questions on what i've talked about, feel free to ask and I will answer to my best extent.

Potter: Any questions? Go ahead.

Saltzman: I did want to say that the city's children's investment fund has in fact invested in stepup programs at roosevelt, and I believe at portsmouth middle school. So we do recognize what a good program it is.

Potter: I'll ask my staff to forward your ideas. Is that in writing, where we could give it to the staff and then share it with our school superintendents in this area?

Heine: I could write something up and email it or something if you need that.

Potter: That would be great. Then we could take that and we will send it to the five superintendents of school districts that have children going to school within the Portland community.

*******:** Uh-huh.

Potter: Thank you, nicole, very much. I thought you did a great job.

Heine: Thank you. [gavel pounded]

Potter: The city council will come to order. Karla, please call the roll. [roll call] [gavel pounded] communication items 1431, 1432, 1433, are testimony regarding the parks issue. If you folks could come up, please.

Item 1431, 1432 and 1433.

Potter: If you folks could give it to our clerk, because she passes them out to us. Thank you very much. Ok. Thank you for being here. When you speak, please state your name and you each have three minutes.

Don Jacobson: I'll begin. My name is don jacobson. Mr. Mayor, commissioners, I want to thank you for the opportunity to be able to talk to you today. I'm representing the mount tabor neighborhood association. And I hope that you all received a letter that I mailed last week regarding mount tabor park and other park issues. I'd like to note that there were seven other organizations that signed on to our letter who share our point of view. In 2004 the mount tabor neighborhood association conducted a survey of its residents. It was very well responded to. And there were two park issues that came up very high on the list. The first was desire to reduce pesticide use in mount tabor park and the second was to improve wildlife habitat in the park. And when we looked into these issues we found that there was no institutionalized public input process into park management and park policies. And in fact we found reluctance to communicate meaningly. We had a meeting with a park supervisor in march of this year, and we expressed our concerns about park issues, specifically we let him know what the survey results were, and also that we requested notification of projects in the park and we followed up our meeting with a letter. It was never responded to, even when the president of the neighborhood association sent a letter to him requesting him to reply, we never did receive a supply. Several of us met with staff members of the city nature project of Portland parks. Again, we expressed our concerns, let them know what the survey results were, and again requested notification of projects. We were told "that we should let the professionals do their job." we discovered that poison oak had been sprayed in mount tabor park adjacent to heavily-used trails without warning signs either before or after the spraying. I understand that Portland parks has an integrated pest management program for which pesticides are supposed to be the last resort. In this case it seems to have been the first resort. I know that -- that poison oak can be eliminated without the use of herbicides because I did it personally on four acres of heavily-infested property. As an alternative, the park service could have lopped the poison oak and dabbed a little bit of herbicide on the stems. That would have greatly reduced the amount of pesticides that wildlife and pets children would have been exposed to. These problems, I believe, can be addressed if there were a codified institutionalized public input process for Portland parks

November 30, 2005

modeled on the national environmental policy act. I would urge you very strongly to consider adding this institutionalized public input for Portland parks. Thank you.

Potter: Thank you.

Michael Schindel: Hello. I'm michael schindel also representing the mount tabor neighborhood association. We had a lot of individuals and other groups that have partnered with us on this effort.

Again, what we're -- what i'm specifically speaking to is the lack of public input in the parks bureau. Portland bills itself as a model of civic engagement, and yet the public's virtually excluded from all city-related decision making processes. The parks department is one of the most egregious examples of this. There's no way to find out who made the decisions within the bureau and why they made those decisions. We've tried to get minutes, and all these things are either prohibitively expensive or not available. The parks board, which is mandated in its charter to be a liaison between the parks and the public, is still even debating in their last minutes whether or not they should engage the public and how that public engagement should occur. They're talking about perhaps opening a 30-minute window at the beginning of every parks board meeting for public involvement, but even that is like heavily debated. The minutes, however, of the parks board are one of the few glimpses we have of the inner workings. A good example of the lack of public process within the parks bureau is an indication that the board is moving toward a new model of park stewardship which may include selling assets like pittock mansion and other underused facilities, closer partnerships with businesses, which may sponsor specific programs or facilities, presumably for advertising rights. Today later on in the docket, the coca-cola company is coming in for an extension of their contract to vend at all park facilities. And leasing some lands and facilities that have high maintenance costs and the outright closure of some community centers, etc.

We feel strongly that the public should have a very major voice in deciding what the future of the parks should be, including the model of park stewardship. If you make those decisions behind closed doors, there's going to be a bitter public reaction no matter how good your decisions may be.

You need to have more input from folks. So I think that at a minimum we need to seek an open and transparent process for the city government decision making process, easy public access to all documents and minutes regarding city projects. The rules and fees regulating public access to city records need to be standardized across all bureaus, and a protocol needs to be developed to respond to citizen inquiries in a thorough and timely manner. We're not the first group to talk about this to you. I know the formation of the citywide team for Portland parks was partially motivated by similar complaints. And the park's 2020 vision, a product of extensive public involvement, called specifically to outline the public involvement process. Please help them do this. Thank you.

Potter: Thank you.

Cascade Anderson Geller: Good morning. My name is cascade anderson geller. As the -- my partners discussed, we're here from the mount tabor neighborhood association, but as you see there are many groups, including physicians for social responsibility, other neighborhood associations, other groups that are interested in these issues. I want to first give some accolades. There's many of you that I would like to pat on the back. I think there is a turn for the better in the city and for opening up public process and allowing the citizens to have their say. And I really want to applaud you for that, because I know there's a big difference. If I had more minutes, I could pat you each on the back and give you some specifics. But because of the lack of minutes, i'd like to commend commissioner Saltzman for taking a turnaround here on land acquisition for parks. I think that's a really important issue, and speaking of wednesdays for children, one of the best things we can do for our children is to give them space to play, space to be a child. And so -- and that will be the legacy that I think will be the most important to leave, is space. You know, in your legacy as city commissioners in this time that you have, in archival work, looking at doing the national registration for the reservoirs and mount tabor park, you see the comings and goings of all of us. Many people have sat up on the bench, but they're long gone, but what remains is what they've

November 30, 2005

done. Parks is a way to touch people. It's the way most people are touched by city government in a very direct way. So I want to thank you for also, commissioner Saltzman, besides land acquisition, pushing that up to the top, is also undeferred maintenance of our parks and facilities. These are very important issues that affect people every single day. They really give the beak conlight of -- beacon for Portland, is parks. Over the years i've had a lot of dealings with parks on phone calls, but trying to figure out and being baffled by maintenance and management issues, but lately i've gone more deeply into the bureaus, and parks I think is definitely a problem area. It's very walled off, very difficult to have communication. It's very difficult as michael was saying to get information. I was told I would be charged \$1500 for a document request by parks when I was working on the national register nominations. There are problems there. I know that you know there's unrest with the citywide team for Portland parks, the kind of shadow, you know, park board that developed itself by the community. We also have the website that you're probably familiar with, calling from inside the park bureau, calling for better leadership, a change in leadership at parks. And then you have our letter with all the other groups signed on. So I think these are all signs that during this budget cycle there needs to be some changes at Portland parks. I got a second here. Let me make sure I didn't leave anything out. I think, you know -- parks seems to have money for things when they want to do them. They seem to be really good at putting together what they consider public process. It's public management. And it's -- it's to get what they want when they want it, if they want to cut down the trees like they did along division in the last week or so, big historic trees within the national register nomination, no documents were consulted, for notice given, big trees, old trees, almost 100 years old, down, gone. And so this happens with nobody -- no one gets to know. So thanks a lot for listening. And we look forward to working with you, and would really like to work together on these issues with parks. So thank you very much.

Potter: Would you care to respond?

Saltzman: Well, I thank you for bringing these issues to our attention. I know that certainly with respect to pesticide use in the parks, we do have an integrated pest management strategy that has resulted in reduction of pesticides and in fact is recognized as a national model, part of our endangered species act compliance strategy and recognized as such. But there's always more we can be doing. On the invasive species at mount tabor park, I mean mount tabor is sort of a mixture of ornamental and native species. We do have a policy of when we do remove vegetation, we replace it first with native, and that policy remains in effect. As to the open city government process, i'll certainly look into some of the points you've raised as it applies to parks, but many of your questions are also directed I think at the larger need for consistent citywide means of responding to public needs for information and access, and that's something that this whole city council will have to really take a look at it. And I did -- I think I prepared a response to mr. Jacobson, and I think I mailed it today. Thank you.

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

Item 1434.

Potter: Mr. Philips, please state your name when you testify. You have three minutes.

Paul Phillips: Yes. I'm paul phillips. And i'm not here to criticize mayor Potter or the Portland police. In fact, i'm here to compliment them. As far as the Portland police, I think that you're the expert here, mr. Mayor, being a former police chief. And I think that chief foxworth is doing a real good job. In fact, he's doing such a good job, i'll relate a conversation that I had in the central police station just a couple blocks from here, the central Portland police station. I walked in, and showed them my i.d., told them that I was paul philips, and presented the person behind the counter with the paper from the c.d.c. About dog bites. And I said it was october 19 about 1:00 in the afternoon. I said to them, I heard the Portland police shot a 90-pound pit bull. The woman behind the counter said, yeah, we shot that one, and we shot a lot of pit bulls this year. And I proceeded to inquire that -- that, yeah, i'd heard that. I was wondering how many that they'd shot this year. She

November 30, 2005

didn't know that. I asked, well, how many people have you shot this year? She didn't know that either. I told her with that piece of paper that 18% of the united states population bitten in a decade, and I talked to the city council about mean, dangerous and vicious dogs. Apparently Portland police seem to agree with that. And I asked her if she'd give it to chief foxworth to find out how many dogs and people that they've shot. If they've shot as many dogs as they have people, they're doing a terrific job. Even if they haven't shot as many dangerous dogs as they have people, I think that they should be commended. Well, thank you.

Potter: Thank you.

Potter: Please read the next item, Karla.

Item 1435.

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

Potter: This is the city council, sir. Please state your name when you speak. You have three minutes.

Graham Covington: I'm graham covington, here as an individual to request of the Portland city council that you ban cellphones while driving in the city limits. As you know, cellphones have become ubiquitous in our live, arguably become an intrusive technology. We've all experienced folks talking loudly, distractively, and often inconsiderately in restaurants, movie theaters, walking along the street. The problem i'm here to address is that dangerously cellphones have become used by folks in automobiles while driving, endangering themselves, families, and others. You opened this meeting by talking about how are the children. This issue is about the children as well as your own families. As you know, the media is replete with studies about this. The national transportation safety board says that "among the many distractions faced by car drivers, cellphones and other wireless devices contributed to far and away the most crashes, near crashes and other incidents." last year on i-405 a truck driver plowed into the back of a passenger car, emulating the passenger, and apologized saying he was distracted being on his cellphone. A few months ago a woman drove off the morrison bridge on her cellphone. We've all found ourselves behind people that behave erratically on cellphones. Signal right, go left, don't obey traffic signals. Coming down here, I was behind a driver going by lincoln high school, looking at his cellphone, wandering all over the street, endangering the children as an example. I'm here to urgently request that the city council initiate proceedings to ban the use of handheld or hands-free cellphones while operating a vehicle from the city limits. There are seven reasons for this, and in your packet is the argument that i'm making. One is the jury is out -- jury is in in terms of research. All the research that you can -- you can accumulate, whether it be from the nhtsa or from the human factors and ergonomics society, or from the insurance institution of highway safety, say that on average you're four times as likely to get into crashes serious enough to injure yourself than if you didn't talk on the cellphone. Distraction is distraction. The human factors in ergonomics society argues that when motorists between 18 and 25 years old talk on cellphones, they drive like elderly people. Now, looking at me, I have nothing against elderly people, but the point is that your reactions are not the same when you're on a cellphone as when you're not. It's when you're paying attention. By the way, it doesn't matter whether the cellphone is handheld or hands-free. Secondly, the insurance industry has taken notice. The united services automobile association's second question, after any accident, is whether someone was on a cellphone. The first question is are you drunk? So cellphone activity while driving is second in priority to drunk driving. Many other states and municipalities have taken action. Some states have laws banning the use of handheld phones for drivers. In canada, big signs are usually allocated to reminding drivers that they need to get off their cellphones and pay attention to their driving. Fourthly, corporations have taken the lead --

Potter: Mr. Covington, you're out of time, sir. Could you please wrap up?

Covington: Yes.

Potter: Thank you.

November 30, 2005

Covington: The wrap-up would be as follows. Other than drunk driving, there's no greater safety hazard to our citizens than driving while on a cellphone. So I ask you to look at this way -- there's no marginal benefit to waiting for more information. And look at it this way. If it was someone close to you that you knew was going to be injured or killed, or someone who's in your family, or anyone else in this community, you would do everything possible to eliminate the use of cellphones. So i'm asking you folks to take the lead here as other municipalities have done and act now before there are any further injuries on your watch. Cellphones while driving are unsafe at any speed. Thank you.

Adams: If I could, earlier this fall we had the city's first citywide transportation safety summit. About 250 people attended it. And this issue was received extensive conversation. Staff is currently looking at documenting the issue and policy options for council consideration soon.

Potter: Thank you, mr. Covington.

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

Potter: Could you leave a copy of your notes, if you would, with our city clerk? I'd like to look at them.

*******:** Yeah.

Potter: Thank you. I'm going to -- the consent agenda.

Moore: Any pulls?

Potter: Yes. Are there any council members who wish to pull anything from the consent agenda? Anybody from the audience who wishes to pull anything from the consent agenda? Karla, please call the roll.

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

Potter: Aye. [gavel pounded] move to time certain. Please read items 13 -- 1436, 1437, 1438 and 1439 together.

Items 1436, 1437 and 1438.

Potter: Good morning.

*******:** Good morning. The first item relates to a letter --

Potter: Please state your name.

Jennifer Sims: Jennifer sims, office of management and finance. The first item relates to a letter we received from the secretary of state audits division following up on a state statute requirement that we respond regarding overexpenditures in our budget, and these are -- the ones that you're acting on today are related to fiscal year 2003-2004. We expect that we may also receive a letter related to the fiscal year that we've just closed for 2004-2005 because we also have overexpenditures. The intent of this is to respond regarding our intent to monitor our expenditures more closely. What I would like to report to you is that all of these expenditures were in areas related to materials and services and debt service. Some of them were related to recategorizations that occurred by our auditors after the close of the fiscal year. So some of these are beyond our control. Not to say that we couldn't do better at monitoring, but in fact some of them just are going to happen maybe in any case. So this action will officially respond to the state statute requirement on this matter.

Potter: Please go to the next one.

Sims: The next item is the fall bump. We had a work session yesterday. This is for internal transfers and also minor supplemental items where we're transferring -- or increasing funds less than 10% or from technologysy of less than 15%. Yesterday we reviewed carryovers, grants, some contingency requests, and discussed budget note status. Today I would like to also briefly touch on position changes, two new budget notes, items that were not recommended by financial planning, and some additional items from the mayor's office. Regarding the new positions, we have -- converting one part-time position to full-time in office of transportation, adding one permanent full-time revenue bureau director. Five positions in the bureau of technology services in support of the

November 30, 2005

police bureau. Three of those are limited term positions related to the electronic field reporting work. Two of them are actual transfers from the police bureau or help desk support. We're adding one limited term h.r. Coordinator. In the office of neighborhood involvement, we have one permanent full-time code specialist to be paid from program revenue. In the water bureau, we are converting our c.a.d. Functions to being on a contract, adding a variety of community outreach positions, or converting them from limited term or part time, partly paid from vacancy savings, and adding three full-time positions to the endangered species act program with savings from professional services. This is in accordance with an ordinance adopted september 6 of this year. In the mayor's office, we are adding three permanent full-time positions for community visioning paid with existing authorized budget and transferring -- and funding one permanent full-time position for film and video coordination using funding transferred from licenses, and in commissioner Adams' office funding two permanent full-time positions from interagency funding to conform to the actual staffing there. Those are all the position ads and changes. I also wanted to mention two budget notes, that the mayor's office is proposing. One related to -- both of these are for monitoring purposes. One is where we are shifting from materials and services to doing work more in-house. The mayor is proposing a budget note that would request financial planning to monitor activities to ensure that projected efficiencies and effectiveness is attained, and the second is related to investments that we're making in technology services to monitor that the -- that the projected long-term cost savings are yielded -- we realize them. The next point i'd like to cover are the items that were requested by bureaus that were not recommended by financial planning, that the mayor has concurred with, and thus are not included in the fall bump action. The first is a request from the police bureau for an additional \$238,000 to pay for an increased interagency agreement with the bureau of technology services. This resulted from a trueup of inventory. This is where after the fiscal year began they realized that they had more things that they needed to maintain and support and more work to be done there. This actually was a result of issues between both of the organizations, b.t.s. And police bureau, working with both of them. They have -- they are going to agree to absorb the cost for this year and in the future the police bureau will absorb that expense. We also had -- I mentioned this yesterday -- a request from bureau of emergency communications for \$190,000 for projected overtime costs, exceeding budget, and f.p.d. Is recommending that we not fund those now, and wait and see how that plays out over the course of the fiscal year. Parks bureau requested \$54,000 for operations and maintenance costs for holly farm, however this facility will not be completed until september 2006 so that additional funding is not needed at this time. So we've recommended it not be included in the bump parks bureau also requested \$1100 for maintenance costs at the columbia slough, and we recommended the parks bureau absorb this cost as it is so minor. Parks bureau has also requested \$35,000 from the general fund to cover a settlement agreement regarding the operation of mccall's cafe. This is operated through the parks trust fund, which has resources to cover this and the financial planning is recommended -- has recommended that it be paid from that source instead of using general fund contingency. The planning bureau has requested a position of economic planner, and we've recommended against that as well. It's not being needed at this time. The office of management and finance has requested converting a limited-term position under -- supporting the itax program to a permanent position of the because of the nature of that program, felt that it wasn't appropriate to convert a limited-term position for a limited program to a permanent position. And finally, the diversity conference, which is an annual event, was not budgeted, but has been held and o.m.f., we've recommended that they absorb that cost. I want to -- so those are the things that are not recommended and not included. Now, there were two other things. We talked a little bit yesterday about the parks bureau request for funding for the buckman pool and for the northgate playground. I mentioned yet that f.p.d. Did not recommend general fund contingency for that, but the mayor has recommended it and it is in the bump action before you today to be drawn from contingency for those two items. And finally, the

November 30, 2005

planning bureau and office of management and finance have requested funds related to planning and moves. The planning bureau wanted \$200,000 for moving to the seventh floor of the 1900 building, and the mayor's office has recommended that they not receive that funding until a citywide look is completed on how that be done, and that, and the office of management and finance has requested funds for a move of assessment and liens division, and the mayor's office has recommended that no additional funding be provided to make any kind of moves. So if they can achieve that within their existing resources, that would be ok. So those are all of the additional notes that I wanted to bring to your attention related to the bump.

Potter: That was all item 1437?

Sims: Yes.

Potter: Ok. Could you then proceed to item 1438?

Sims: Yes. Yesterday the tax supervising and conservation commission held a hearing related to the city's request for a major supplemental budget action. This is where we're increasing the -- the total appropriations in various funds by over 10%. There were five funds included in that action. We have -- these were presented to council in their work session yesterday. We have received a letter of certification from the tscc, and the council is free to act on that today. The last item under my section here today is adoption of the budget calendar. The council conducted a debriefing session, along with others, staff and citizens who are involved in our budget last year, and we came up with several things to improve the process. Those are reflected in this budget calendar for your action today. This council calendar reflects starting earlier, increasing the number of forums that we will be conducting from two to three for the public involvement. We've changed the process to include three teams instead of two, focusing particularly on infrastructure requirements through full council participation as a team on that. And one of the things that I wanted to point out, that in order to accommodate this schedule, which does provide additional time for the teams and for the mayor's development of the proposed budget, that the actual proposed budget document will be abbreviated this year in order to meet all these dates, but this calendar does, I believe, reflect enough time to do all the things that the council wanted to do for deliberations for this next year, and still, of course, meets the adoption date by june 30.

Potter: Are there questions from the commissioners on these items? Do we have a sign-up list on this?

Moore: We do. We had one person sign up. We have cheryl ellis.

Potter: Please come forward, cheryl. Please state your name when you speak. You have three minutes.

Cheryl Ellis: My name is cheryl ellis. I'm a resident in Portland. And my question to you is what is your plan of action in the budget of Portland police training facility?

Potter: Ok. I tell you what, i'll give a call and discuss it with you, but basically i've been talking to the police chief about the inadequacy of our police training facilities, not just in Portland, but in the region. All of the police agencies experience a serious problem in finding appropriate training venues for firearms training, vehicle training, and simulated exercises. And right now there's a host of possibilities out there, and i'm going to be coming back with a recommendation to the city council on how to proceed on a regional training facility.

Ellis: Thank you.

Potter: Thank you, cheryl. Please call the vote on item 1436 -- excuse me. Commissioner Adams, you were out. Did you have any questions regarding the budget?

Adams: No.

Potter: Item 1436 is a resolution, nonemergency. Please call the role.

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

Potter: Aye. [gavel pounded] please read item 1437. It's an emergency vote.

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

November 30, 2005

Potter: Aye. [gavel pounded] please read item 1438, emergency vote.

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

Potter: Aye. [gavel pounded] please read item 1439.

Adams: I just want to flag for the council and the public that the transportation, if we can get scheduled in transportation toward the latter part of the meeting scheduled in february it gives me more time working with the public, but other than that, sort of a warning, aye.

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

Potter: Aye. [gavel pounded] please read the 10:00 a.m. Time certain.

Item 1440 and 1441.

Potter: And please read item 1441. Thank you very much folks, very much, I talked to you earlier this morning, but I really appreciate you volunteering. Youlee pf&r, you have extraordinary credentials, serving in the trial division of the Oregon department of justice in salem. You've done work in new york and california, but you chose to come back to Portland to raise your family here in Portland. We appreciate that.

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

Potter: You have a significant number of awards and commendations for your work in the law community. You currently serve on the board of the korean american citizens league, the diversity committee of the trial division of the Oregon department of justice, and you've received, as I said before, many awards for your service to the mother teresa's orphanage in new delhi, india. Would you like to make a comment?

Youlee Yim You: I would like to thank you so much for inviting me to participate on the commission. As I mentioned earlier this morning, after having lived in new york and los angeles, my husband and I knew that returning to Portland was our only option in terms of raising our children. My work as a prosecutor has exposed me to a lot of horrible situations involving crime and poverty and children who have been neglected. I hope that through my work on the commission I can make an impact in some way to addressing those issues. I'd like for this to be a city that's not only a great place to live for my children, but for all of the children.

Potter: Amy, your background is equally as impressive. It includes an environmental law degree from the university of pittsburgh school of law, bachelor of science in operations research and industrial engineering from cornell. And you've chose to live in Portland because of the comprehensive planning and values that Portland has in sustainability. You work as a matter of fact as a sustainability coordinator, and you're responsible for facilitating the design for efficient and healthy buildings through innovative uses of materials, technology and design. You're an active member of the u.s. Green building council. I love these credentials, amy. And leed-accredited professional who has managed projects nationally and locally.

Yim You: My boy actually.

Potter: I recognize him. And you're also a leader in sustainable design. You worked with northwest energy efficiency alliance project, stop Oregon litter and vandalism project, city of gresham environmental services, and many other areas. So, amy, thank you for willing to serve on the planning commission. Would you like to say a few words to these folks?

Amy Cortese: Thank you very much for the opportunity. I look forward to working with the other members of the planning commission, the planning bureau, all of you, to realize a economically prosperous and sustainable vision for the city of Portland.

Potter: Thank you both. I ask for a motion to accept the report on items 1440 and 1441.

Adams: So moved.

Saltzman: Gladly seconded.

Potter: Karla, please call the roll.

Adams: I want to thank you you both for your willingness to serve on this very important commission. I think you both bring credentials and experience and outlook that will be great for the

November 30, 2005

group. One thing that I want to work -- put some emphasis on is the transportation commissioner working with planning, is we actually, despite a lot of investment in transit in the city, both light rail, streetcar, bus, and now maybe tram, we don't have stationary plans in the city. We do not have enough transit stationary plans in the city. So we're building the new green line with tri-met on the east side of the city. I live on the yellow line. And we need more stationary plans so that we get the full potential out of our investments in the transit system. So I look forward to working in partnership with the planning commission and transportation on that issue. But welcome aboard. Look forward to seeing your work. Aye.

Leonard: Well, i've reviewed both amy and youlee, and we're delighted to have you serve on this important commission. Thank you for your service. Aye.

Saltzman: I'm very pleased with both appointments. Certainly both of you appeal to my passions, and the mayor's passions here, which are kids and sustainability. We've had a lot of discussions on this council about making sure that our housing policies, our tax abatement policies, speak to family friendliness, and those discussions have occurred in the planning commission as well. I hope they will continue to occur as we strive to become a more family-friendly city. I appreciate your recognition of that. Amy, I know you, and know you're well grounded in many issues related to how do we make Portland the most sustainable city in the nation. How do we make that translate into well-paying jobs, as well as a good environment. And i'm confident that these issues -- I know the planning commission has made efforts to engage itself more in these issues, and I will hope you will lead them further down that road and look forward to both of your expertise on this body. Thank you. Aye.

Sten: I want to congratulate you, mayor Potter, on two terrific choices. I think you'll add a lot. It's great you're willing to serve as somebody also with a toddler, it's going to take your whole family to allow you to make this assignment, because it's a lot of work to be on the planning commission. Let me thank your husband and the extended team. One of the things we're working on right now that I think you're both well suited to help on is trying to -- and we've always done it, but much more kind of realtime coordinate our planning and development efforts. So one of the things coming through the budget and the the mayor's strategic processes under way, i'm teaming up on this one, is to try and use the budget process as well as the planning commission process to better work with the p.d.c. and so that the things that we're planning are a little better tied to the things that we're building. They're not that far apart right now, but I think there's a lot of room to get it tighter and more synergy that way. I really look forward to it. Obviously we're a long way from being the world's capital of sustainability, because there are places in europe far ahead of us, but inc. We can use our leadership in the united states to get there to world class, and I think you guys can help do that. On a personal note, I have a particularly soft spot for assistant attorney attorney generals, because my father was one, and I grew up thinking that was an honorable position, and still do. Aye.

Potter: Amy, I don't know if you brought family, but I know you did, youlee. Introduce them.

Yim You: That's very nice. Thank you. My husband, tom trimball. My youngest son actually. My youngest son kiernan. My mother-in-law, and best friend, jill roberts. Thanks for that opportunity.

Potter: Amy?

Cortese: I also have a 2 1/2-year-old, and he's at home, miles, and my husband rodney.

Leonard: Are they watching on tv? Wave hi.

Potter: I vote aye. Thank you folks very much.

*****: Thank you.

*****: Thank you.

Adams: Congratulations.

*****: Thank you very much.

November 30, 2005

Item 1442.

Potter: The 10:15 time certain, item 1442, will not be heard today. It will be rescheduled to december 7. Instead commissioner Sten has asked to insert item 1496-1 to be heard before the regular agenda. Is there any objection to suspending the rules and hearings for being ahead of the regular agenda? Ok. Commissioner Sten.

Item 1496-1.

Sten: Thanks, mayor Potter. I'll ask the team to come up. This will be a relatively short presentation, and I apologize for not following procedure. We had a thanksgiving mix-up, and the person we thought that was going to file this did not, and I don't like that to happen, but I appreciate the courtesy of the council to hear this now. Today we're presenting for the first time publicly Portland fire and rescue's strategic plan for the next five years. And I have to say i'm about as excited as one can be about a strategic plan. This really is the future. And under the chief's leadership we're trying to make sure that we take an agency that -- you know, you look at the survey that was done of Portlanders, has a 90% approval rating. Easy to get complacent, and that would be dangerous, because this is a bureau that's job is to keep us safe. We see a variety of challenges coming forward and this five-year plan is really our overall road map to get there once the council has time to dig in. We'd like to present it in a short fashion today and look for more work throughout the budget process to get the council's buy-in and signoff, but it really revolves around four years. One is organizational response, being ready to move quickly in machinings. Customer service, which becomes more and more important. Structural fires are down over the last four or five years. I don't think that's coincidental to the inspection program. I think it's because of the inspection program. The inspection program was very controversial. It took a lot of labor, management, partnership to figure out how to do this, how to do the inspections is an ongoing thing, but what we found is that in the survey the vast majority of businesses are very satisfied with the inspections, which we thought they would not be. That was the kind of innovation that leads to less fires. Work force development is another huge piece. A very large number of our firefighting work force is retiring in the next few years. They're baby boomers who have served their time and are going to be leaving. So it's both an enormous challenge as we lose so much expertise and experience, it's also -- it's also an opportunity to work on issues of diversity, to reach out, try to encourage young people to get in fire service. There's leadership training as well. We're losing line people, losing a lot of management. That's something we have to plan for. And of course financial accountability is the final piece. It's not -- it's a good thing, but the fire bureau has probably taken more cuts as a percentage than any general fund bureau, and I think you'll see from these numbers is still doing the job. This will be the umbrella, and why I wanted to bring it in now, by which you should judge the service delivery study that the council ordered next year. Everything should fit under this. We'll take another look at that study, stations that haven't been built. I also want to look at the growth areas. I'm very concerned about the south waterfront, it's popped into the very front of my mind. There's no fire station in the south waterfront, in a place we know will be enormously challenged. We've got to think about that. The issue with gresham is back before us, station 45, gresham, may change their funding approach. If they do, we'll need to change ours. I think those are the kind of issues that the council gets in trouble trying to grapple with without this kind of strategic plan. They come before you, and it's hard to figure out do they fit without knowing the bigger direction. That's what we're going to try to put forward today. We have, in the spirit of managing for results, we have specific accountability measures. We have benchmarks. We have things that we expect to be judged upon. Most importantly, and i'm going to end here, is we want to keep working on our response time. At the end of the day, that is the most important thing, is how fast we get there. This is designed to help us. We make our benchmarks well in comparison to other cities, but not as well as we'd like to. We want to get there even faster. This is part of that process. So before I introduce the chief, let me introduce elisa and jack. The sworn personnel wear

November 30, 2005

the uniforms, and often get in the calendars that are sold for charity, but the nonsworn personnel often do a lot of the -- the work that gets -- that gets us possible to do what we do. So jack and elisa have really been behind the strategic plan and I want to recognize them publicly. So chief?

Chief Dave Sprando: Chief, Portland fire and rescue. Good morning, mayor Potter and city commissioners. Here at the table with me are jack and elisa, the project managers for our five-year plan. This is our third five-year plan, the one we're presenting here today. I do want to mention what the commissioner said -- we get to wear the uniforms, but the folks next to me did a tremendous amount of work on this. I'm proud to say that a document is a result of broad collaboration from citizens, management, labor, sworn and nonsworn employees, and a wide range of external stakeholders. Before I go into an overview, and it will be a quick overview of the plan, i'd like to turn it over to jack and elisa to describe the process and design of the plan.

Jack Graham: Good morning, commissioners. I'm jack graham, department of the fire bureau. This plan was designed to be user-friendly to both goes and citizens. To that end we use an approach in developing this plan. The balanced scorecard focused on four main areas. Those areas are internal business processes, customers learning and growth, and financials. The internal business process focus allows in an organization to develop strategies to become more efficient, effective, and achieve results. The customer focus provides direction to help improve customer service and customer satisfaction. Learning and growth focus allows an organization to improve its employees' skills and capacity. And finally, financial focus allows an organization to closely review its ability to reduce costs, increase revenue, and become more fiscally responsible. Our strategic themes are in line with the four main areas of the balanced scorecard. This plan is also user-friendly in the format and in the display of information about Portland fire and rescue and the community we serve. There are two maps showing our neighborhood fire stations and the areas they serve, as well as the response statistics. These maps are located on pages 11 and 13 of your plan. It's in front of you. We have also provided a thorough discussion about trends and identified - - that were identified through an environmental scan. The discussion are at two levels. The first level is our primary trends in our operating environment. The second level is the local and national fire service industries trends. The trend information is located in your plan starting on page 15. In short, we anticipate that both citizens and employees will be able to embrace this plan and have a better understanding of our direction over the next five years. With that, i'm going to turn it over to elisa, and she's going to explain the process that we followed.

Alissa Brumfield: We began this process about a year ago, a little bit over a year ago, in order to address the community, the city, and other issues facing Portland fire and rescue. Having done this many times in the past, we realized the importance of involving as many as stakeholders as possible, both external and internal to Portland fire and rescue. That's what we did during this process. In order to fully understand our issues, the opportunities and challenges for Portland fire and rescue, we conducted focus group meetings with internal and external stakeholders. We surveyed citizens, business customers, and employees, and we interviewed key individuals throughout the city of Portland. Some of you may have been in that group. We worked closely with the steering committee who guide third down process. The committee was a cross functional, internal and external team, that provided input at key stages of planning and development. You can find a list of their names on page 45 of the plan. We also convened task force to dissect data and information collected from the interviews, the focus group sessions, the trends research, demographic analysis and industry research. Their work in large degree makes up the bulk of this plan. This really is a document that a lot of people were involved with. And they should be proud as well, the people who were involved. I'm now going to turn it back over to the chief and let him give you an overview of the plan.

Sprando: First the plan supports many of the directive and initiatives from the mayor and the council, including bureau innovation projects and managing for results. Some of those that the plan

November 30, 2005

addresses include increasing cultural awareness and diversity of the work force, fostering interbureau collaboration and working across silos, and enhanced customer service, both internally and externally. The plan also emphasizes the necessity to be fiscally responsible and secure funding. Actions are measurable through performance measures and individuals are accountable for completion of plan components. We've revised and updated our mission, developed a vision and guiding principles to support the mission. In addition, we've identified four major themes as commissioner Sten mentioned to serve as a road map. Each theme is associated with goals, strategies, and clearly defined performance measures. The theme and 14 goals are as follows. And I'll go through these rather rapidly. Number one is operational effectiveness. By thoroughly evaluating all levels of our service delivery, we can provide the most appropriate service for our customers. The goals in this theme are, one, keep the city safe from low frequency, high consequence events such as major industrial accidents, terrorism, and natural disasters. Two, maximize dispatch effectiveness, including how we prioritize our calls and allocate our response resources. Three, improve technology use and system implementation to increase speed, flow and reliability of data. Four, implement resource demand management and response strategies. This will help better manage the emergency response workload by reducing inappropriate use of the 9-1-1 system. Five, improve quality, value, and efficiency and timeliness of external support services. By evaluating and providing feedback about the cost and benefits relation of our services, we can make sure to use the least cost and most effective providers. Six, enhance effectiveness of internal communication to make sure owl internal employees have access to critical information. Seven, educate our employees about our internal planning process to increase participation and collaboration. The next theme is customer service. As the commissioner mentioned, we do -- are fortunate to have a very high rate of customer service, but we always continue to try and improve on that. We do that by striving to improve our relationship with diverse and supportive constituencies, through excellence in customer service. There's one goal under this theme, but it's very comprehensive. Ensure timely, quality customer service from all levels of our organization. This goal addresses everything from our safety learning center to our company-based inspection program to ensuring that there are positive outcomes for patients that receive emergency medical care from our firefighters. The third strategic theme is work force development. The success of pf&r depends on high-quality motivated work force with integrity and professional expertise. We're fortunate to have these qualities recognized nationwide and hope to continue a track and retain outstanding employees. The four goals on this theme are, nine, maintain a highly trained and educated work force which will include evaluating current training methods and enhancing career development. 10, enhance the safety and health of our work force. This goal addresses everything from continued reduction in injuries and illnesses through our wellness program to providing ergonomic workstations. 11, demonstrate leadership in the area of cultural competency by achieving a work environment where all employees are treated with respect and dignity. Pf&r is well under way in this area, and we will continue to be implementing the recommendations from our cultural assessment as well as comprehensive training programs for all levels of the works. 12, enhance effectiveness of staffing and human resource processes. This goal will ensure appropriate staffing to provide effective public safety for citizens we serve. And finally, the last theme is financial resource management. There are two goals that will help us ensure we meet this goal. Number 13, effectively manage the overall pf&r costs. This goal includes strategies to reduce costs and implement cost-saving measures throughout the organization. And finally, goal number 14, secure stable funding for pf&r operations. In the spirit of finding alternative funding resources, this goal includes strategies to obtain grants, develop partnerships, and find opportunities to recover costs. As you can see, it's very comprehensive, but this is just the first step. The plan was designed to be something that comes off the shelf and is in the hands of everybody, including the public. To that end, part of this is -- each of our division managers is required to develop an annual work plan

November 30, 2005

to ensure that throughout the five-year period each of these goals gets attained. There's been a lot of work put into this process, and we will use it over the course of the next five years to keep the city safe and livable. I want to thank the citizens who participated, employees, stakeholders and partners in public safety who helped us create this document. And I want to mention that we do have a number of our employees here in the room today who assisted us in the process. So we're available to answer any questions. Thank you.

Potter: Questions from the commissioners?

Saltzman: I have a question.

Potter: Ok.

Saltzman: It looks like a great report. I'm admittedly just looking at it for the first time, but I didn't see anything that addresses the notion of returning those on light duty disability to work. Is there something in your goals and objectives on that?

Sprando: Commissioner, I believe we would include that as a part. I believe if we look at our work plan, it is a piece of the safety and health of our work force. I believe we have in the work plan an action item that includes that. And we are working actively on --

Saltzman: In this document there's an action item?

Sprando: The action items aren't in this document. They're a separate document that follows up this.

Potter: And we've been having discussions, both at the pension board level and at the mayor's office, about -- and fire has submitted a preliminary report. And what we're looking at is having it happen within this fiscal year. So we're -- it will be submitted to the full council when it's at a stronger stage of development.

Leonard: And I will also point out that I happen to be aware of a the fire bureau is light-years ahead of the police bureau in bringing back injured members to positions in the fire marshal's office, that they otherwise would have stayed off on disability, and that there's actually a lot to be learned by the police bureau of what the fire bureau's done. And I will also remind folks that we had an opportunity earlier this year to vote on something that would have required more people to come back to work. That failed. So i'm very aware of what you're doing. I obviously am interested in doing more, but until the police bureau catches up, I don't think it's fair to put more of a burden on you.

Sprando: Well, thank you. I do know, just to follow up with the mayor's comments, we have submitted a plan, and there are some other opportunities that we can make work in that area.

Saltzman: Is that plan available to us, or is that something you're working on right now?

Potter: It's being developed. I think there's a number of legal issues that have to be resolved. There's some union issues that have to be resolved. So when it's to the stage where it's in sufficient form for the council to look at, we'll bring it forward. Commissioner Leonard, the only thing I disagree with the concept of light-years. How about light-days? Because actually the police bureau has identified 59 positions for light duty, and we have --

Leonard: The rubber hits the road when we fill them.

Potter: Well, there's close to 20 positions filled already.

Leonard: With light duty folks?

Potter: With light duty folks.

Leonard: Congratulations.

Sten: We have no comment on this discussion.

Leonard: This is a fire and police --

Saltzman: My second question to switch gears --

Leonard: Firefighters are better than police.

Potter: Ahem.

November 30, 2005

Saltzman: There's a bullet fire that Portland fire and rescue will establish -- it's on page 36, that Portland fire and rescue will establish a learning center in the new fire station one. As I recall, that learning center is to be operated entirely from fundraising separate from fire, you know, fund, is that correct?

Sprando: That's correct. The structure is part of the initial structure plan, but the operation is, as you mentioned.

Saltzman: Operational dollars for the learning center will be totally out of the general fund budget?

Sprando: That's correct.

Sten: I don't think this is an exception. We do run our -- which I think is just common sense -- we run our education people out of there as a way to -- the fire bureau has people who do education, a small number, and run them out of the learning center so kids can come in, but anything beyond that.

Potter: Thank you. Do we have to call for a motion to accept this?

Sten: We should probably accept the report, I think.

Potter: Do I hear a motion to accept the report?

Sten: Probably check public testimony.

Potter: Oh, that's right. Is anybody signed up to testify on this issue?

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

Potter: Anybody from the audience wish to say anything on this matter? Ok.

*******:** Mr. Mayor --

Potter: Yes. Please step forward, sir.

Ron Clemenson: Good morning. I'm ron clemenson, centennial community association, vice-chairman. I'll be very brief. I think the chief and his staff have covered this very well, but I wanted to bring before you a perspective from the citizens on this matter. In 1987, as randy and others know, we closed station 45 out in east Portland. And during that year our response times went from the average of five, six minutes, up to eight, 10, even 12 minutes, because there was for coverage, either in east Portland or in west gresham. Fortunately in 1998 the new fire commissioner, jim francesconi, worked with us and the citizens went on a real campaign to get that station reopened. Fortunately it was, with all the efforts mentioned, and we are now back to the normal response times, and they're doing a terrific job. And in my participation on the council, it's very obvious that safety is priority one. We have been faced with threats from the outside, terrorism. We have been promised an earthquake. Hopefully it will never happen. And thirdly, we have a city that's ever growing population-wise and structurally, so we cannot afford to take any more cuts, in my opinion, on pf&r. If anything, probably needs to be expanded. But trying to live within the budget, a 3% cut again this coming year, I don't think we can do it. I know we can't. I know the fire folks would agree with that. And so my -- my urging on you as a citizen is to maintain pf&r, support them, continue your support of this city, and I know the city has many bureaus, all bureaus, that are in need. So hopefully we won't have to see a lot of cuts, because all of it's important. That's really my take on it. I hope that this will occur from you folks. Thank you very much.

Leonard: Thank you, ron.

Potter: Karla, please call the roll. Do we have a second on that motion? Ok. Please call the roll.

Moore: I need to read the item.

Adams: I want to commend commissioner erik Sten for your leadership in this area. This is a very readable report. I want to thank the leadership and everyone at the fire bureau for the innovation that's clearly evident in this report, and also a recognition that we're in tough financial times, and you're looking at innovating and constantly improving the efficiency of your operations, which I know everyone up here is very grateful for, but most importantly is your ongoing efforts to do all that and keep our citizens safe, both in the prevention side, but if there is unfortunately a fire, your

November 30, 2005

quick response to it, including the initial ambulance care -- or initial paramedic care. So thank you for everything. I eagerly and happily vote aye.

Leonard: This past saturday I quietly celebrated my third anniversary on the council. And gave me some pause to reflect. And if i've had any success at all in rebuilding some of the assignments that I was given that have been challenging it was because of the lessons I learned, albeit without realizing it, whiffs a member of the -- when I was a member of the fire bureau for 25 years. I took a lot more with me than I realized in how organizations should run, and the message that the chief gave about the community outreach, I have learned for some bureaus is just so many words. For the fire bureau, it is a way of life. It is the culture of the fire bureau. I know from the relationships I have with firefighters and police officers there's a sense from them that they are under siege now by the city. That's unfortunate, because there is no group of people, in both bureaus, that dedicates themselves more to the preservation of life and property than firefighters and police officers. I know all of us here unanimously agree with that. I mean, that's a -- we may have some differences on nuances amongst ourselves in terms of specific issues, but all of us value highly the work of our firefighters and police officers, but none more so than myself and mayor Potter, and particular commissioner Sten, who is doing such a great job leading the bureau that I find no opening for me to make the argument that it should be an assignment I have.

Potter: So noted. [laughter]

Leonard: Unfortunately. And i've looked. So i'm very proud to accept this report and vote aye.

Saltzman: Well, I too want to commend the bureau and commissioner Sten for this great report, strategic plan. It does indeed look like an engaging strategic plan, one I might even read. I tell you, I don't read many strategic plans. Thank you for your hard work and I look forward to working with in this upcoming budget process. Aye.

Sten: I appreciate everyone's attention and support. This is important stuff. It would be easy when you do something well and do it every day, and very -- in a very busy fashion to be complacent, and i'm very proud of the chief and his team. Thank you. I wanted to thank the nonsworn personnel, who I don't see in the rest of the room, as well as the rest of us who took this on. Rich rogers in my office. One last thought, the reason we have to be on our toes is things like the avian flu. The fire bureau is trying to figure out right now what our plan will be if about that terrible event, which I hope never happens, were to come to importantly. Those are the kinds of things that say to us we've got to be ready. With the support of the council, with tough budget decisions, but with this kind of strategic planning, the citizens of Portland should be very confident we will be ready. With that, thanks again, and I vote aye.

Potter: I'd like to add my congratulations both to commissioner Sten who I think has done a wonderful job with the fire bureau. The chief and the men and women of the Portland fire and rescue services. You know, I had the honor of being the fire commissioner for six months, and still have my fire badge as proof of that. And I really enjoyed the time. I think the citizens should know out there that you've got a very professional fire bureau, and that they are dedicated to serving the community, and that i'm also impressed with the management of the organization. I think it's one of the best-managed in the city. I think that's compliments to the chief and the previous chiefs. Also your dedication. I was at the airport, and was there as 10 firefighters were returning from the south, and I know both the water bureau and the fire bureau has been very up front and out there in terms of providing assistance to the victims of katrina. And I know that we can learn many lessons from that experience. But it was their dedication that I was really impressed with. I want to thank you. Please relay that to the members of your organization as well. It's an excellent plan. It has all those ingredients, I think, that will make a successful organization and a safer city as a result. I vote aye. [gavel pounded] we'll move to the regular agenda. Please read the next item.

Item 1479.

November 30, 2005

Potter: The gist of this particular ordinance is that we want to have the visioning folks out on the east side centrally located, easily accessible to citizens, both by light rail and bus. And this was a location that's been offered to us for free, and we really, truly appreciate it. Any questions from the commissioners? Karla, please call the roll.

Moore: I don't know if anybody wants to testify.

Potter: Oh, i'm sorry. Anybody want to testify on this matter? Ok.

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

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

Item 1480.

Potter: Anybody from poem here?

Patty Rueter: Mayor, commissioners, i'm with Portland office of emergency management. Here to answer your questions if you have any.

Leonard: Wearing her city of Portland flag on her lapel.

Rueter: Yes.

Leonard: Excellent.

Potter: Could you explain what this does, patty?

Rueter: The purpose of the basic plan is to set out the authorities and the agreements, mutual understandings between bureaus. It authorizes the mayor to act in an emergency and respond to the issues of an emergency. It's basically document that guides all the rest of the documents, all the rest of the emergency plans that the city operates under in an emergency.

Potter: Any questions from the commissioners?

Adams: Is this just a reauthorization, or something different in this than the previous one?

Rueter: Title 15 says that we redo the plan every year. So there are a few changes. One, the wording on page 10 states that we are in compliance with the national incident management system, and the national response plan. That's what we're heading toward. And then also all of the emergency support functions have been updated. All of the different bureaus that have plans have given us their updates for their hazards, and all of our partners have given us their updates. So we have a compilation of emergency plans. This also shows that on page 12 the participation needed by all of the bureaus in the emergency management system of the city. Paining 11, there also is adjustments to the command. We changed the command structure for an earthquake to unified, so all immediate -- if we had an earthquake, such as we are anticipated to incur, we would immediately go to a unified command between maintenance, fire and police because of the -- the magnitude and the issues that will be involved in that. And that is related on page 11. Those are the main adjustments that we've made this year. And that's why we're readopting it.

Adams: Thank you.

Potter: Other questions? Thank you very much, patty.

Rueter: Ok. Thank you.

Potter: This is a resolution. Is there anybody here to testify on this matter? Karla, please call the roll.

Adams: Thank you for all your work on the plan and your work every day to keep us safe in the event of an emergency. Aye.

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

Potter: I too want to thank the Portland office of emergency management. When we initially thought we were going to respond in a big way to the people who were survivors of katrina, we were expecting upwards of 1,000 people. Portland office of emergency management really went to work, working with the red cross, Oregon department of emergency management, and our regional partners to make sure that if we were to receive these folks, that they would be greeted in a very hospitable and friendly manner and provided the services they needed. Although fema canceled the large influx, we've received almost 1,000 people in Portland over the last few months as a result of

November 30, 2005

katrina. And it's a -- the receiving center, which is the old Washington monroe site is still open and still working with families to try to relocate them into Portland and provide them services. So thank you, poem, and thank the fire bureau and the acting director, mike mcgwire, for the work that they did. Aye. [gavel pounded] please read item 1481.

Item 1481.

Ken Rust: Mayor Potter, members of the council. For the record, i'm ken rust, the director of the bureau of financial services. With me this morning is eric johansen, the city debt manager. The ordinance you'll be considering this morning would authorize the issuance of hydropower revenue refunding bonds, the purpose of which would be to refinance two outstanding series of bonds associated with the bull run hydropower project. The results of the refinancing will accomplish a couple of things. First, we expect it will be debt service savings on the bonds, producing about \$300,000 a year of savings, which will be to the benefit of p.g.e. ratepayers. P.g.e. has a power sales agreement with the city. And basically has all the financial risk and responsibility for the financial operation of this particular project. The city has no financial obligation under the terms of the power sales agreement, and never has as we developed the power project back in the late 70's. We also will be reducing the size of the renewal and replacement fund, which is part of the power sales agreement. We believe that that particular fund, which has been established to provide for the repair and replacement of the facilities is overfunded at this time. There will be approximately \$1.2 million that will be taken from this fund and split evenly between the city and p.g.e. The city's share will revert to the general fund. Finally, this is an emergency ordinance. We brought it to you in that fashion because the refinancing depends on current market conditions, interest rates, etc., that are moving up and down every day. We anticipate selling the bonds in the next week or so. And will do it in a negotiated sale with goldman sachs and citigroup. If you have questions, eric is here and should be able to help with you that. Thank you.

Potter: Questions from the council? Ok. I want to thank you. You know, you're one of those folks who work behind the scenes a lot, and you save our citizens a lot of money. And I really appreciate it. I think this is one of those examples. So thank you. Any questions from the commissioners? Please call the roll.

Adams: Thanks for saving us money. Aye.

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

Sten: Great job. Aye.

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

Item 1482.

Potter: Thank you folks too being here. I want to read a statement first. It's been a long and often difficult road to today, and I think this vote on a new operating agreement for p.g.e. Park is an excellent indicator of the advancement we've made. We've been -- we have successfully worked our way through the challenges that resulted from the financial difficulties of the Portland family entertainment, and are now prepared to start a new era at p.g.e. Park with a new park operator and new ownership group. The ownership group includes a local sports figure the community has come to like and respect, jack cane. The management team is experienced and capable and has already taken significant steps to improve the performance of p.g.e. Park operations. Staff has negotiated a five-year operating agreement that meets the city's financial goals established in the city term sheet approved by council in 2004. Today we have a renovated park, a triple-a baseball team has returned to Portland after a seven-year absence. Professional outdoor soccer is also back, and Portland state sports programs have benefited from the improvements made. Local high school football and baseball programs use p.g.e. Park, and it's a good neighbor to the surrounding community. I'd like to ask tim and dave to give a brief overview on this agreement.

Tim Grewe: Thank you, mayor Potter. You've done a good job of placing this action in context. I'd like to elaborate a little bit on a few of the points that you made this morning. First being that

November 30, 2005

this has been a long journey for me, since I was involved in this project right from the get-go, which dates all the way back to 1999 when we really got serious about this project. And the reason that project began is because, as many of the council members know, and the citizens know, we were dealing with a facility which at the time was nearing the point where it was going to be declared a dangerous facility by our own business -- excuse me -- our own building officer within the city. So when we knew we were going to have to take some type of action on it, and therefore the council, under the leadership of the mayor at the time, directed us to review options and report back to the council. The first option we looked at was what do we have to do simply to deal with the seismic and other code problems of the facility. Fortunately we very quickly found just to deal with those safety issues was an \$18 million proposition. That \$18 million would do nothing to assist the facility to become a better business proposition. For example, it wouldn't expand the concourse, it wouldn't expand food facilities, it wouldn't deal with the restroom issues, a lot of the other operating issues we had with the facility. We then looked at a second option that beyond the \$18 million necessary for the safety improvements, how much would it cost to do those other things that might allow us to draw more events to the facility and improve it as a business operation. The problem with both those options, of course, was we didn't have the money to pay for the \$18 million, let alone some higher amount in terms of the debt service. And at the time we were losing as much as \$250,000 per year on operations at the facility. That then took us to that second option, and the question whether or not we could enter into some kind of a public/private partnership to fully restore the facility and truly make it once again a good asset for our citizens, something where they could enjoy entertainment with their families or individually in the sports venues in particular. So we went out for an r.f.p. For a public/private partnership, and as you certainly are aware the successful contract during that was Portland family entertainment. That was back in 2001. The deal that we entered into at that time was to do a full renovation at a cost of \$38.5 million. Of that amount, \$5 million did come from Portland family entertainment. And the remaining \$33.5 million came primarily from an increase in lodging and car rental taxes that were voluntarily imposed by the industry at the time in order to allow this to move forward. There was also some facility specific revenues that were utilized to support the facility. While it quickly became apparent that our private partner was suffering financial problems and was having trouble meeting its financial obligations to the city, and after repeated attempts on their part to try to restructure in a manner that would allow them to continue, it became necessary for the league to evaluate their situation, and they actually ended up pulling the franchise from Portland family entertainment. The city in turn terminated its operating agreement due to lack of performance on that agreement. And we began at the council's direction to look at options for restabilizing the facility. And that's what leads us to today after a series of one-year contracts with the current operator, which I should remind you the league has been managing this operation for two years now on an extended contracts, and during that two-year period we have seen continued improvement in the financial stability of the facility. And the agreement today takes the next step and turns that relationship with a new owner and with a new operator and with the league's agreement into a multiyear contract, that we believe meets all the terms, as the mayor said, that the council directed us to try to pursue with this agreement. Now, one of the questions that arises, how do we know that this is a good agreement for the city? And all I can do is assure you that we tried to access as much information as possible on stadium agreements around the united states that were comparable to this agreement. And we conclude from that that this agreement does -- as dave will go through in a minute, does stand at the upper level of similar agreements throughout the united states. And we're confident enough to tell you today that we believe that this is a good deal for the city, given the past history of this facility. Now, we will still have an operating loss over the term of this agreement, and we're estimating that that will be approximately \$150,000 per year. That money will come from the spectator sports fund, which the rose garden, memorial coliseum, and now p.g.e. Park are all operated out of. So

November 30, 2005

the profits coming from the rose garden, which we see continuing into the future, in spite of issues with attendance, will be used to provide that subsidy. I say subsidy, but I really want to perhaps place this in another -- give another perspective on that. When you really boil this all down, the goals we set out with in 2001 when we entered into that initial agreement was to fully renovate this facility. Do that \$38.5 million renovation, without using existing city property taxes or other revenues, but to use the revenues from the stadium, a voluntary increase in that rental tax and lodging taxes to pay for that facility. Today with this agreement for \$150,000 per year we have a newly-renovated facility that has additional venues in the form of soccer and an upgrade in baseball that our citizens and residents can enjoy. So in a strange kind of way, even though it's been a bumpy road, we're kind of back full circle to where we hoped to be in the beginning, and that is renovating this facility and trying to minimize the risk to the general fund that it might have to pick up the costs of doing necessary public safety improvements. I'm going to stop there and turn this over to Dave, who's briefly going to go through the terms of the agreement, the more significant in terms so that we're on record publicly with those terms today.

Dave Logsdon: Good morning, mayor and commissioners. I'm Dave Logsdon, spectator facilities manager. I'd like to start with a financial overview. The city will receive revenues from three primary sources under the agreement. An annual license fee that's paid in three installments during each operating year. That license fee starts at \$700,000 per year in 2006, and does increase each year of the agreement. There is a user fee on tickets of 6%. The user fee for beavers and timber games, they are set in the agreement, and then for all other events the 6% will be based on the actual ticket sales. And these fixed payments for the beavers and timbers, that that revenue figure increases each year as well. And the third primary source is called the past due payment, which reflects the city's efforts to recover a share of the unpaid balance from the prior operator. And strong performance by the operator may result in an additional payment we call the premium payment, and that would come in to play if the tickets sold in a given year would exceed the -- an annual benchmark that's been established in the agreement. And as has been mentioned, one of our goals for the new agreement was enhanced security and certainty for the revenues coming to the city. City revenues are secured under this agreement by an annual letter of credit which guarantees the payments for the license fee and the past due amounts. And certainty is provided by the fixed annual license fee and the fixed user fee on the beavers and timbers. These are our two largest revenue sources, and account for about 85% of our total annual revenues. In year one of the agreement, the revenues to the city will increase by about \$250,000 when compared to the single-year agreements for 2004 and 2005. I think this increase reflects the additional value a long-term agreement has to the owner/operator. It was in our mutual interest to move ahead on this agreement, if it does provide more revenue for the city and for the operator, the opportunity to enter into multiyear agreements for sponsor suites, ticket packages, etc. I would now like to highlight a couple of operational features of the new agreement. First, the operator will continue to have full operating control of the park and will be responsible for all operating and maintenance costs. The operator will be responsible for the first \$25,000 in repairs each year with the city picking up repair costs that exceed the \$25,000 in any given year. The city remains responsible for capital improvements. In the agreement, the city will be paying for \$125,000 in upgrades to concessions equipment and a couple of other potential investments are on the horizon, the replacement of the roof and replacement of the field surface. We will monitor the conditions of the turf and the roof on an annual basis and may have to invest in these at some point during the term of this agreement. And the final piece of the agreement I would like to highlight is the extension provision. The base agreement is a five-year agreement good through 2010. The operator may exercise a two-year extension option, which would make the agreement effective through 2012. So at this point Tim and I could take any questions from the council or we could start the testimony with the league officials that are with us here this morning.

November 30, 2005

Potter: Questions from the commissioners?

Saltzman: You talk about the city incurring a \$150,000 a year operating loss. I guess i'm trying to understand, is this the -- the semantics here. The operator is going to assume all operating costs. So what is our \$150,000 a year operating loss?

Logsdon: It's essentially the difference between the revenues that we're going to receive under this agreement and the primary expenses, about a million dollars per year in our share of the debt service on the bonds. So there is a slight annual operating loss, which we're comfortable will be covered by the operating surplus that's created from the rose quarter operation.

Saltzman: So that loss is really our debt service?

Grewe: Right. Our share of the debt service, which is about \$3.5 million a year with the remainder being picked up by the lodging and car rental tax.

Saltzman: I was also curious about where did things end up with money owed to some of the providers of concessions at p.g.e. Park? How did that all come out in the wash?

Logsdon: I'm not fully aware of all the circumstances there. I know on a go-forward basis with all the existing vendors, they continue to do business with, that they've worked out arrangements for those. There are probably other vendors that -- I know the new owner has stated that he intends to deal with that and take care of that. I think that's something that will -- you know, will unfold in the next year or so as they, you know, get to trying to resolve all those accounts payable issues from the prior operator.

Saltzman: And then what about -- I think we adopted a living wage policy that concessionaires and the operator needed to pay people who work in the park. Did those agreements carry forward?

Grewe: No, it's no longer part of the agreement. We were -- it's frankly a matter of affordability. We don't have the revenues to deal with that. It would increase the deficit. Commissioner, that was dropped in --

Logsdon: Starting in 2004, with the first single-year agreement.

Saltzman: And then parking enforcement, what happens with parking enforcement in the neighborhood?

Logsdon: In the neighborhoods, we pay -- we have an interagency with pdot, and we pay \$40,000 a year to cover the cost of enforcing the parking permit programs in northwest and goose hollow.

Saltzman: Thanks.

Potter: Good questions.

Leonard: I'm just wondering about the whole major league baseball thing and the marlins. Well, i'd actually heard that the owner had offered -- of the marlins -- to pay up to \$200 million to construct a stadium. Have we been contacted at all or --

Grewe: The only contact i've had on this matter is through the Portland sports authority, and I have no details of anything that's been offered, commissioner.

Leonard: Ok.

Grewe: Certainly once we get those, we'll review it, if we get them. We'll be reporting back to you on anything that we see. But in that regard, I think it's good to say that, as you may recall, we did finalize a financial plan.

Leonard: Right.

Grewe: Back when the d.u.c. Team was in play, and that's still sitting on the shelf. It's got a lot of risks associated with it, because the goal in that plan was not to use any existing public resources.

Leonard: Right.

Grewe: For that facility.

Leonard: What got my attention about this is, is that the owner had offered to pay the portion that, as I understood, we had contemplated paying as a city, that combined with what the state's committed, seems to be about what we talked at the time, \$350 million to --

Grewe: It could be. I haven't seen information.

November 30, 2005

Potter: The Oregon sports authority has contacted the mayor's office, said they're in discussion with the marlins, but haven't given any details as to what that constitutes.

Leonard: Excellent. Thank you.

Potter: Other questions? Thank you. Who else did you say was here to speak, dave?

Logsdon: The president of the pacific coast league and art savage on the executive committee, and jack cane.

Branch Rickey: I think i'm familiar with all of you, and you've been generous with your time and taken so much effort to look into this. And it's greatly appreciated. We came before you over a year and a half ago when we ran into some dire circumstances. The p.f.e. group that was having trouble meeting its financial obligations, and the city rescinded the operating agreement. At that time we pledged to you that we wanted to stay in Portland. We looked forward to stabilizing this franchise. We would step in as a league, which is difficult on the minor league level, I will say to you, and we will stabilize this and we will look forward to delivering a franchise that can survive and be successful in Portland. I heard that you were just discussing what other options were and what the -- what the fuller picture is. And earlier this morning you had discussions about hurricane katrina. Prior to katrina, in new orleans, we were -- we were triple-a baseball. We were just triple-a baseball. They had an nfl franchise. They had ann nba franchise. They had an arena football league franchise. Today post-katrina, the only franchise that survives in new orleans is triple-a baseball franchise, and we're committed to making that a success. We're pledging to trying to work through disaster, major disaster there, and stay in the market. We made that same pledge here in Portland when we ran into adversity. And I think that what we're looking at today, this multi-year operating agreement, is testimony to the fact that we have lived up to the trust that you have shown in us, the trust that we would try to work through this, and the trust that we would be putting in place long-term stability for this franchise. The next step, the operating agreement really is the key element to a more comprehensive settlement. Without this operating agreement, the league could not be looking to bringing a new buyer to the table. This agreement facilitates the transfer of that new ownership from the p.c.l. to the new investor group that you've identified, ppig. The new ownership enables the p.c.l. To go through with the settlement with tiaa, teachers, as we refer to them, in terms of solving the dilemma that emanated out of the p.f.e. debacle. And the settlement with tiaa, unlocks the future in Portland for triple-a baseball and for the timbers. Long term, long term. We really are -- we're really proud of who we are. We know who we are and how we fit in Portland. We're affordable family recreation. And we are the vindication for the p.g.e. remodeling that you undertook back in 1999. We're the best use, we believe, for p.g.e. park. And Portland is the best market for this franchise. So I want to express my thanks for the extraordinary steady cooperation that you have shown in this long difficult process to both this council, to you, mr. Mayor, and to the staff, your staff, and the way they have dealt with us. Together we can now set our sights on not just a solution, a one-year solution for 2006, but we can look forward to many years beyond that. Thank you.

Art Savage: Yes. I'm next. I'm art savage, member of the p.c.l. Executive committee and the president of sports management consulting, the operator assigned by the league to help operate this franchise for the last two years, and will continue in a consulting role with the new ownership group so that the transition is -- is seamless and we can continue the progress that has been made in the last two years. As you know, there was a lot of feed to build a lot of relationships. We think the last two years has shown the commitment of this group, you know, through the league, and will continue with the new ownership group which this -- we're continuing with. We've hired a new general manager for this past season, jack cane, who's here at the table, was operating the team on behalf of the league in 2004. John cunningham has recently been hired for the 2005 season. And we've made great progress. Staff has -- has doubled and significantly the sales and marketing staff has increased to 10, which has helped ticket sales increase about 16% this last season. There will

November 30, 2005

be two more ticket staff on board for 2006. So we're looking forward to growing it, and frankly making an event better franchise, and we're excited about the opportunity. Been numerous new sponsors have been attracted to the park this last season, which is a positive step that hadn't occurred for several years prior to that. We've created a sponsorship in suite sales department that did not exist previously, created a community outreach department that did not exist previously. And we hope to reap benefits from both of those. And then in fact have to help make this stable, so that in fact the city gets its lease payment paid, which I know they'd like to do, and have for the last two years through the league's operation. We have actually held the first concert this past season. I think the first concert in three years. And plan on doing more of those to increase awareness and attendance and events for the communities and citizens of Portland. Had two soccer exhibition games this past season. We'll continue do those. One of which was an international team. We're focusing on a number of outside events and corporate picnics and outings and things to enhance that and make it open to more people. I think there's been a lot of progress the last two years. The quality of the new ownership group, which Jack Cane can address as a member of that group, is outstanding, and the league is thrilled to have that group come in the Pacific Coast League. We're pleased to be here today in front of you and hope you'll accept the recommendation of the staff.

Jack Cain: Hello. My name is Jack Cane. Abe would liked to have been here, but he had prior commitments. He's chairing some meetings for another business that he owns. But on his behalf, I'd like to -- and the rest of the ownership group -- tell you that we're excited about the progress and the potential at PGE Park. We've got a great staff, like Mr. Savage mentioned. We've increased the size of the staff. Portland is a great market, largest Triple-A market in the country, and I think we can show some good numbers from that. We're looking forward to the 2006 season and beyond. And we think with the partnership that we have with the city, we will be very successful.

Potter: Do any of the commissioners have questions for these folks?

Leonard: The only question I had was on the subject of the major league baseball. I think I remember the answer to this, but isn't the eventuality that that -- in the eventuality that would come to pass, as unlikely as it might be, isn't it a complementary transition or not?

Rickey: I don't know that I'd use the word complementary, but within the baseball rules, in the agreements between major league and minor league baseball, they have dominion, the ability to exercise authority to come in to a market and they except Triple-A baseball for the loss of the market.

Leonard: That's kind of what I meant.

Rickey: I take it in the best use of the word complementary within the industry.

Leonard: It wouldn't end up into a war between your group and them?

Rickey: No, there's no war, and in no way would it -- would it put the city in a complicated position vis-a-vis the two parties coming in. There are arbitrations that are mandated, which cause us to resolve any difficulties between major league and minor league baseball.

Leonard: Ok.

Rickey: So they can come in. And we take this step with full recognition, the fact that major league baseball may be exploring this market. On the other hand, we've seen efforts previously in which they indicated they were, and indicated they were, and indicated they were, and they're not here. So we are here. We're proud to be here. And we really appreciate, again, the efforts that you've taken to allow us to work out a solution.

Leonard: Great, thanks.

Cain: One thing, commissioner, on that basis, the better we do, the better chances that major league baseball would realize that this is a good baseball town and some day come here.

Leonard: Right. I heard you say, Jack that this is the largest Triple-A market in the country, which makes one makes that next jump.

November 30, 2005

Cain: Kind of makes sense, but we need to prove that this is a baseball town and we can do a good job. And I think we're ready to do that.

Leonard: I appreciate that. Thanks.

Saltzman: How big is the ownership group, and has the p.c.l -- what kind of background checks, due diligence do you do on the owners?

*******:** We have a --

Saltzman: And do we have the name of the ownership group? I didn't see it anywhere.

Rickey: The ownership group is pbig, Portland baseball investors group, and we have a process that we refer to as prequalification, which we have gone -- prequalification which we've gone through with this group. And of course we're now -- this -- this new -- this operating agreement and the chance to pass along to them a multiyear agreement really enhances their desire to come forward now and finalize that deal. So we're looking forward to now taking the final steps to authorize them.

Saltzman: So you're in the process of authorizing them. Does that include due diligence, background checks, things like that?

Rickey: We've completed almost all of that. I think at this point I could probably say we have concluded all the background checks.

Saltzman: Do we know who the owners are in the ownership group?

Rickey: Well, the ownership is abe and jack cane. Abe has a majority role in that, and there's nobody else in that that is above 5% in terms of their ownership portion. So they're an investor group that has been brought to the table by abe, by jack, by art, by others around the baseball scene to be investors in that group. But there's nobody of significant role beyond abe and jack.

Cain: Also, commissioner, the -- you know, besides what the pacific coast league does as far as background checks and things, now called minor league baseball, but we refer to it as the national association, does extensive checks, as well as the commissioners offices has to sign off on it too. The coast league, national association, and the commissioners office.

Saltzman: And just ultimately, is that list available to the city?

Rickey: Yes, ultimately it is. Just as soon as we finalize that deal, it absolutely is.

Saltzman: Ok. Thank you.

Potter: Other questions? Thank you folks.

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

Potter: Do we have a sign-up list?

Moore: We have two members of the advisory group.

John Bradley: Good morning. My name is john bradley. I reside at 2315 northwest johnson. I'm here today to speak for the new operating agreement as a member of the mayor's p.g.e. advisory committee and chair of the p.g.e. good neighbor agreement oversight committee. This year has been a good one for the park. Total attendance is up. We've seen a good increase in group sales, sponsorships are up, and for the first time in a very long time we've seen a music concert. All of these items point to the new operator's commitment to a financially viable, thriving p.g.e. Park. From the neighborhood's point of view, the new operators and managers have continued to be committed in the strongest way to fulfilling the terms of the code neighborhood agreement that was struggled over so many years ago. What few complaints there have been concerning littering, poor parking, have been dealt with in short order and we couldn't be more pleased. In terms of this agreement before you today, it is my sense that a good balance has been struck between the needs of the city for its revenue obligations and the needs of the operator to be financially successful. I urge you to accept this new agreement and put p.g.e. park on a financially stable course toward the future. Thank you.

J E Isaac: Good morning, mayor, commissioners. I'm j.e. Isaac, senior vice president for business affairs for the Portland trail blazers and also a member of the mayor's advisory group for p.g.e.park.

November 30, 2005

I also want to add my endorsement of this deal. And I want to start by saying that taking this opportunity to tell council, which i'm sure you're aware of it, what a tremendous asset the city has in your management -- in your office of management and finance. Tim and his people in the spectator facilities group, dave logsdon, and john acker, i've had the pleasure working with them for about a dozen years, and they're excellent.

Leonard: Now they'll want a raise. Thanks a lot.

Isaac: And I think they've done a great job here when we first read that things were going south with the -- with the p.f.e. deal, I frankly had serious concerns about the city's position with regard to this venue deal. I think they've done an excellent job of steering the course, making this changeover pretty much revenue neutral for the city, and even being able to go back and capture back payments is just an excellent job. Anytime you do a deal for a facility, it's got to make sense for both parties.

We've seen in this market where -- when deals aren't right and one partner goes under, you really don't have a deal. So you've got to structure a deal so that it's -- both parties can survive and thrive.

And I think that's what you have here. I think it's a good thing that this deal builds in some stability and security for the city's payments. And I think it is excellent that we're moving ahead, and the city's also fortunate that we have the p.c.l. committed to this market and willing to do this deal pending the negotiations with the new ownership group and the previous lender. So I also urge your acceptance of this deal.

Potter: Any questions from the commissioners? Thank you very much, folks.

*****: Thank you.

Potter: Anybody else signed up?

Moore: We do.

*****: Good morning.

Potter: Good morning. Sir, state your name when you testify and you have three minutes.

Joe Rastatter: I'm joe rastatter. I'm a member of rose city golf course men's club and a peace and justice activist with my saint francis of assisi parish, and with the jobs and justice organization. I know commissioner Sten likes to recall his football-playing days at civic stadium. Well, I got you by about 20 years. My peanut and pop and other stuff sales began during my high school days at civic stadium in 1966. And I care about what happens there. I also like and respect jack cane, too. When civic stadium was about to be remodeled five or six years ago, I was worried about the status of jobs there. There was a lot of public conversation about issues of noise and parking and tri-met transportation, but labor issues were not on the table. And so what happened was the union of ticket sellers, gate attendants and ushers, that union was busted and the workers were left out any status. These working were making \$9.10 an hour, up to \$12 an hour, and many were Portland schoolteachers who received pension points for their work there. So as we were picketing the groundbreaking ceremony, mayor katz twice pledged to us that she would work to see that workers would not lose ground on this deal. The city council voted twice to remedy the situation. The first one I found out much later just had resolution status. It was frustrating and didn't have any real teeth to it. So as opening day approached, the new operators of p.f.e. continued with a plan of not telling its newly-hired workers what their pay would be. It turned out to be \$7.50 to \$8 an hour, with free tickets, free uniforms and hot dog dinners. So the park workers and jobs of justice renewed our campaign, which included a plan to nonviolently disrupt the opening game. What happened was two days before the park reopened, the city council passed a fair wage ordinance of sorts that provided a \$9.50 floor wage for workers that chose it. P.f.e. was confident that the majority of work would choose their plan, but the results were laughable, 135-6, the workers chose the \$9.50 wage, which was in effect, my understanding, for just one season. It also included custodial and concessionaire workers, as well as the ticket and usher people. I'm frustrated that the fair wage ordinance has in effect been discarded. Most of the workers, my understanding, there do work for well below the \$9.50 an hour wage level. So i'm here to refresh you, and refresh us all

November 30, 2005

about a bit of this history, and make the point that jobs, especially jobs at our city-owned facilities are supposed to pay enough for people to live on, supporting people's rights to form and maintain union membership is a good thing, and when city government looks to contracting out jobs or private/public partnerships, workers' rights and pay equity needs to be a priority. My last point would be, if the fair wage ordinance is in fact still on the books, you should enforce it. It seems too often when rich people, like paul allen or p.f.e. investors lose money, it's not their money, but if a worker loses wages they really suffer. Amen.

Potter: Thank you.

*******:** Any questions?

Potter: Karla, is that it?

Moore: That's all who signed up.

Potter: Any questions from the commissioners?

Saltzman: I guess i'd like to bring tim and dave back up here and refresh our memories on the fair wage ordinance and its cost impacts. Was that a discussion item in the current negotiation with ppig? Did I get it right? The Portland baseball --

Grew: Dave and I were just talking, and I may have to get back to you with more detail.

Potter: State your name for the record.

Grew: Tim grew, chief administrative officer. Excuse me, mayor. There's two actions the city has taken in this regard. One is the city's overall policy on fair wages, which covers things such as custodial workers in our parking structures, and I think maybe a couple other classes of positions. I do not believe that was the ordinance -- the authority that was granted -- or the council action that was granted in regards to the vendors at the baseball -- not vendors, but the workers at the stadium. I believe that was embedded in the operating agreement. And my recollection -- if my recollection serves me right, when we came back with various amendments, we not only dropped this clause, which had the city paying the difference between what the operator was paying the workers and what was a livable wage, it also dropped things like ticket subsidization for tri-met and a number of other things we could simply no longer afford in this agreement. Our financials today continue to tell us, at least at this point, that were we to impose such an action on that, our deficit would probably go to \$200,000 to easily could be \$300,000 or \$400,000 more based on our prior experience. Whether or not the spectator sports fund could handle that kind of a subsidy annually, I don't think so, not with the current condition of the business at the rose garden. So we're here today, coming to you from a business perspective, as to what's affordable at p.g.e. park, and from what we've seen, the wages that are being paid right now, are affordable. If we impose anything on top of that, it's going to increase the amount of deficit that we have financially at the facility.

Saltzman: What are the wages being paid now?

Grew: We'd have to ask --

Logsdon: Yeah. We'd have to check with the operator.

*******:** If you'd like to talk to them again.

Sten: I'd like to see something come back in terms of a written report. You know, I don't want you to get real formal about it, but i'm frustrated by -- I believe the council has voted on this before. I understand the business decision, but I think when there's a business decision to, in my opinion, in essence suspect the council's policy, because we do have a policy when we contract work out, which essentially I believe we're doing here, to have some base wages, that the council's got to own that decision. And somebody's who's been pushing on this, while I understand your argument, frankly I don't think it's -- i'm doing my job to sort of let you guys make that decision at that level. I think this is something the council has to talk through if we're going to say, in this case we're not going to follow our own principles for expedient reasons.

November 30, 2005

Grewe: Perhaps I wasn't clear, but when we came back to you with the one-year agreement for the extension, we addressed this issue at that time, along with all the other things that had been added on to the city's financial plan.

Sten: In my mind I'm distinguishing between what I thought was a one-year agreement to get us through one year and if we're now saying this is a financially much, much better agreement, which you are saying to me, you're also saying, but we're not going to pass on any of that financing to the people, we're going to reap all the benefit of that, the workers are not. I think that's something, if we're going to make that decision, we need to make it as a council, but it is counter to our stated positions, in my opinion.

Grewe: We'll be glad to get back to you with the report on that.

Potter: Would the members from the ball club like to address this issue?

Sten: I don't need it addressed right now, but -- it's not ball season yet. But spring to come and not understand what's going on here.

Saltzman: I guess I want to understand what the wages are. If you're going to give that to us in a report, that's fine.

Grewe: We'll do that.

Saltzman: I think commissioner Sten and I were the only two that were here during all of this, is correct in his -- well, I think both sides are correct. I mean, we did pass an ordinance speaking to the fair wage. We did abandon that in the context of the one-year sort of crisis mentality operation paradigm, and I think commissioner Sten's point, which is something we need to discuss is, when we abandoned that under more dire circumstances, did we abandon it once and for all? Or should we in fact look at resurrecting it now, that we do have an agreement. And as you're saying, there will be a cost to us if we want to do that. I think that's something we need to be able to deliberate on. We'll see what the number are.

Grewe: My primary goal today was to try to bring you an agreement that we felt was financially workable for all the parties involved.

Sten: I mean, I recognize that our living wage policies cost money. If we're going to implement them, we have to find that money. I think there's consequences to not implementing them, create precedent. I'd like to have the council make that decision explicitly.

Potter: Other questions? Thank you folks. This is a nonemergency. It moves to a second reading. Karla, what is the date for that?

Moore: Coming back next wednesday.

Potter: Next wednesday?

Moore: Wednesday, uh-huh. It will be december 7.

Potter: Ok. Please read the next item.

Item 1483.

Potter: Ok. So is it vote only?

Moore: We could just vote on it.

Potter: Ok.

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

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

Item 1484.

Potter: This says there's an amendment in the book?

Ed Rutledge: Good morning. Ed rutledge, labor and employee relationships manager. Yes, there is an amendment to this, that the settlement agreement is between the city and district council of trade unions, dctu. The amendment correctly identifies the involved labor organization as international operating union -- union of operating engineers, local 701. This authorizes a settlement agreement, resolves a grievance for two employees. Comes before council because the settlement agreement exceeds \$5,000. I'd like to say that this is a settlement agreement that was

November 30, 2005

reached, even though this issue was scheduled for arbitration. The parties actually got together, revisited this, came up with a settlement agreement. I'd like to think that's the way it ought to work. We can avoid litigation through that. Obviously the recommendation is that the ordinance be passed. Questions?

Potter: There's a recommendation for the amendment to read that the ordinance should be amended accordingly and state that the settlement agreement is between the city of Portland and the district council of trade unions, ductu, local 701. Do I have a motion to move that amendment?

Sten: So move.

Leonard: Second.

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

Potter: Aye. [gavel pounded] is there anyone signed up to testify on this?

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

Potter: This is an emergency vote. Do the commissioners have any questions? Please call the roll.

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

Potter: Aye. [gavel pounded] please read item 1485.

Item 1485.

Terri Williams: Good morning. My name is Terri Williams with the revenue bureau. The ordinance before you today is to authorize the signing of an amendment to the contract between the city of Portland and Portland downtown services, inc. That is the group that runs the downtown clean and safe program. And the amendment is to remove all references to the ice skating rink that in 19-- in 2002 -- pardon me -- we increased the fees to help fund a holiday skating rink in the downtown area. Due to public reaction and a process, it was determined that the ice skating rink should not go forward. Last year, in December, the council authorized an amendment to take all of that funding out of the ordinance for the business improvement district. We have issued the refunds to those members of the district that have paid that, made payments toward that, and this is final step to actually amend the contract between the city and the pdsi. If there's any other questions, I'd be happy to answer them.

Potter: This is the one for pioneer courthouse square that they were going to do?

Williams: Yes, the ice rink in pioneer courthouse square.

Potter: Any questions from the commissioners?

Ben Walters: Ben Walters with the city attorney's office. This is just a bit of cleanup to make sure that the contract reflects the changes to the city code. They haven't been collecting this, and the refunds have occurred. It's just to make sure that the legal agreement between the city and pdsi reflect what's been going on in the last year.

Potter: Questions? This is a nonemergency and moves to a second reading. What is the date of that second reading, Karla?

Moore: Next week, December 7.

Potter: Ok. Please proceed to the next item.

Item 1486.

Potter: This is a second reading and vote only.

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

Sten: Aye.

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

Item 1487.

Jeff Baer: Good morning. I'm Jeff Baer the acting director for the bureau of purchases. Before you this morning is a request to replace the current city code pertaining to the city's surplus property disposition, and what this will do is -- it will allow the city to more efficiently dispose of surplus property and provide options for disposition and also to enhance procedural consistency. Just a

November 30, 2005

brief background, how we arrived at this point, this originally began out of our joint city/county sustainable procurement work group looking at furniture, but as we started delving into it we found it needed to have a more comprehensive review and we expanded that -- our stakeholder group into all the different bureaus within the city and especially those that have surplus property as part of their work responsibilities. And what this will help us to do is to consolidate the process, and end up drafting additional administrative rules regarding the adoption of the proposed -- proposed code and the remaining procedural details. And also, once this passes, we are ready and have been working with the bureau of technology services to launch a new internal website for employees to be able to post their surplus property, office supplies or office equipment, so that they know we can put those back into place within the different bureaus within the city to be able to use that instead of surplussing the items. With that, I'll stop and address any questions you might have.

Potter: Any questions from the commissioners? Thank you, Jeff.

Baer: Thank you.

Potter: This is a nonemergency and moves to a second reading. [change of captioners]

Item 1488.

Dan Williams: Good morning Mr. Mayor, commissioners. My name is Dan Williams, I'm an underwriter with the Portland Development Commission. This is Komi Kalevor, he's the manager of the housing development finance section. We're here today to review the request for approval of a transit oriented development tax exemption under section 3103 of the city code. I just want to clarify this program was not affected by the recent moratorium on new multi-- multiple units housing tax exemption. The project itself, Gateway Towers Condominiums, is located on Northeast 100th Avenue between Burnside and Glisan within four blocks of two light rail stations. It's comprised of 42 for-sale units, 28 one-bedroom and 14 two-hitch bedroom. The price points are between \$99,000 and \$104,000, and the two-bedrooms between \$154,000 and \$161,000. Making them affordable in the 45 to 68% medium family income range for a family of four in Portland. The developers are Gordon Jones and Andrew Kelly, and total development costs are estimated at 4.79 million. As far as public benefits tax exemption will result and advance affordability for low and moderate income buyers and greatly expand the pool of potential buyers. The only public subsidy being requested for the project is the proposed exemption and S.D.C. waivers. The project will also provide publicly accessible landscape plaza areas and a pedestrian bench on Northeast 100th. The exemption will be available to buyers earning less than 100% of median family income for a family of four, which is \$67,900. The estimated 10-year cost of the exemption and forgone revenues is \$769,000. At this point Komi, if you have anything to add --

Komi Kalevor: I think that's a good summary.

Williams: Thanks. I'll open up to questions at this point.

Leonard: I have a question. The price of the units that are outlined on page 3 of the -- what's this called? Of your analysis from P.D.C. kind of lays out what the prices are of the units. Are those prices locked in? Are they committed to sell these units for those prices, given that this is in this document?

Kalevor: I believe Sara from the Mayor's office asked the same question. They are not locked in, but we don't expect very wide variability. It's going to be in that neighborhood. That's what the market is.

Leonard: Ok. The reason I'm asking is because I recognize that those prices are attractive for lower income workers, I support that. But I would like to have some assurance or some report back what the units actually sold for. Because I don't want us to look at this and be misled into thinking that these units are locked in at that price if in fact they sell for some other price. So I just think it's important to manage this project to make sure that the kinds of folks that were qualified to be able to buy a unit at this price are still the people after we pass this that qualify to buy these units.

November 30, 2005

Williams: I think it's market driven. These prices are essentially at market for the area. The code itself has a requirement that the prices have to be below 95% of the f.h.a. average for Portland, that's somewhere around \$270,000. Which is not realistic.

Leonard: I'm not in the real estate business, I go through this area all the time and I see for sale signs that advertise units much more expensive than this. So I know the area will support more expensive units. I like that the prices are this, I support abatement that's create opportunities for working class people to buy units like this. I just want to make sure I don't vote on this today thinking that's what people are going to be able to buy them at and have that change.

Kalevor: Commissioner, are you -- construction costs are going up, there's a chance it will be some change, but it's not going to be significant.

Leonard: I just want to know what they are.

Kalevor: It will come out with the report.

Leonard: It -- would cause me great consternation.

Sten: Is there any way to put a range or some kind of -- if they change beyond a certain point it would come back to the council? Is that --

Williams: I have the developers here.

Potter: What does page 2 indicate? I thought that spelled it out on the resolution itself at the bottom. Be it further resolved, it said purchasers will qualify for the tax abatement based on two criteria, the purchase price may not exceed 95% of the median purchase price --

Leonard: That's \$200,000 something.

Potter: The unit must be sold to a household earning no more than 100% of the area median income.

Williams: That's correct.

Leonard: Those amounts are much greater than what's -- what these units sell for. So that's the upper limit, the reason I ask the question is because you've listed out what the prices are here, that allows much -- a greater number of people at a lower income to buy units than what that 95% level does. Which i'm attracted to. So I would be disappointed if in fact they went up to 95% of what is it, \$275,000? That would be how much? What's 95 of 275?

Williams: 95% of \$284, so --

Leonard: 275 is the 95? So as you can see, 275 would disqualify a lot of people from buying that would be qualified to buy at these prices.

Potter: I thought both of these criteria apply.

Leonard: They do. I guess I just have a hard time agreeing to an abatement for a condo that's \$275,000. I don't at a condo at these prices. I think these are the kinds of income levels that we want to target, what you have laid out here. I'm less attracted to condominiums that cost \$275,000.

Kalevor: The developer is here in the audience.

Potter: Could you please come forward?

Gordon Jones: Gordon jones, andy kelly is also here. If you'd like to hear from both of us, that's fine too.

Leonard: You heard my question about the price that's are laid out in the document?

Jones: Right. I think the primary distinction that we need to understand here is this is a tax abatement that does not benefit the developer other than it helps us with our marketing and our absorption schedule. These pass through to homeowners. So it's a completely different type of tax abatement than I any --

Leonard: I understand that. My specific question here, however, is that i'm very supportive of an abatement for the kinds of income levels that would be able to raw forward these prices. I'm less so when you get to \$275,000, that's --

Jones: I couldn't agree more. That's why --

November 30, 2005

Leonard: I want to know how close are we going to be to these prices when you put them up for sale?

Jones: It will be our posture to try to maintain prices just as close to this price sheet as we possibly can, and I think if you look at our record in gateway arbors one and two, and the -- those projects we maintain prices very close to what we had promised to do, or proposed to do throughout the project.

Leonard: If we had a limit of no more variation than 5% on this or we'd have to relook at the tax abatement, would that --

Jones: If that's what the rules had been when we made application for this and when it was proposed, that's one thing. But we're not a long-term affordable project that we're committing to 60 affordable of that nature. This is a for sale project and these benefits pass through to the homeowners. Our profitability if you could guarantee that our construction costs wouldn't go up more than 5%, I think that's -- that's one thing that we have to live with. During the construction process, there are sometimes increases in costs, and if we had to raise the prices somewhat during the -- right now we're only at the very, very beginning of this project, so it's impossible to predict exactly what our construction costs are going to be when everything is final and resolved. This is a very, very tight project and we strive to keep our prices extremely affordable and still produce a quality project. But.

Leonard: Understand, these are public dollars that we're spending on the project. That we're not collecting them doesn't mean it's money we would otherwise get in exchange, I'm just wanting to hear something that -- I like the package, don't misunderstand me. I'm liking what I'm looking at. I'm attracted by the price and income levels, I'm just looking for some assurance that this isn't some -- something would change -- I understand you have increased costs, I just want to know with some reasonable assurance that a unit listed at \$99,000 will be without some other extenuating circumstance selling for the price you have listed here. Or close to it.

Jones: It's going to be selling very close to that. I think our track record would bear that out. We came before the council a couple years ago when the same process was on gateway arbors 2, all of those sold out, probably all but two or three of the people that purchased those qualified for the tax abatement.

Leonard: I'm familiar with that so when do you plan to be done?

Jones: About May of 2006.

Leonard: What if we ask for a report back in June of 2006? With respect to the pricing.

*****: I --

Kalevor: It will take a little longer to absorb, to sell them, so --

Leonard: But you know you're going to -- how much you're going to sell them for then, right?

Jones: Each one of these sales, when it goes through closing at the escrow company, the way we're doing it now with p.d.c., and this is I think a great improvement over the first project I did with a transit oriented tax development, or tax abatement, the title company is required to qualify each of these people based on their income, whether or not they qualify for each of the assistance development charge waivers we've received on both -- both on -- on transportation and --

*****: Parks.

Jones: Not parks, water. Transportation and water, we don't qualify for the parks because we're a for-profit, not a nonprofit. But it's very strictly monitored by p.d.c. --

Leonard: I understand that. I'm just asking can we get a report back when you're done of what you're putting the units up for sale for.

Jones: As it was pointed out, it's going to take six months after completion for absorption and full sell-out.

November 30, 2005

Leonard: I think we're talking about two different things. Wait. Just listen to what i'm asking. I just want to know what you put them on the market for. You know when you're done how much you're going to ask for them. Right?

Jones: Right.

Leonard: That's all i'm asking for. If we can get that report. I'm not asking for what you sell them for, but how much you market them for. You should know that as soon as you're done.

Jones: We'll know that -- we'll have a price sheet that we'll be publishing and putting out to potential buyers probably within the next 60 days. This is --

Leonard: For june, i'd like to have a report back to council on what these units are for sale for, not what they sold for, but what the market is that you're -- just so we can --

Jones: I think you'll find that these -- the prices we'll have them for sale for and what they'll sell for is going to be real close.

Leonard: If that's the case, this is a wonderful project and a good use of in project.

Sten: One question, mayor. I want to clarify something, I don't want to get commissioner Leonard riled up again like yesterday, but at the risk of that, you can go back and check and get right back to my office if there's a problem, the council changed the s.d.c. Program in last year's budget and instructed parks to -- all qualifying developers. It's an -- you should get the parks s.d.c. And before july 1 you did not, but we equalized it. It's my understanding b.e.s., parks, water, all have the same requirements.

Leonard: They must have decide it's not a good program.

Sten: Remember we had disparate programs, we fixed that in the last budget, and it appears it has not been implemented.

Jones: We were told we didn't -- that there was a pool of money for parks --

Sten: That's the old program.

Jones: You had to qualify or ask for it by a certain date. I really wish we could have qualified for that, but we're told we didn't.

Williams: It's possible that came down after.

Sten: It should have been changed as of july 1. I'm getting to sound like commissioner Leonard yesterday, which you don't need to worry about.

Jones: We probably did apply prior to july 1. This process has been going on for a while.

Sten: If that's the case, that's the case. The program changed on july 1.

Jones: Can I ask a question of you, commissioner Sten?

Sten: If it's ok with the mayor.

*******:** The qualifications for the buyers was different between the various departments. Has that been standardized so buyers might qualify for one charge waiver and not another, for example?

Sten: The intent was to have it all standardized. It's certainly been legislated. I'm going to check into whether it actually happened.

Adams: I would certainly endorse that.

Sten: I've had a long-term goal where you qualify and you get all s.d.c.'s or you don't. I believe that's the policy of the council that was written into this year's budget.

Leonard: But it's just advisory.

Adams: Apparently our decisions are advisory.

Jones: Any other questions of myself?

Leonard: No. Thank you. Don't misunderstand my questions, either. I'm liking what you're doing, I just want to make sure we do what you say.

Potter: Thank you. Anybody sign up to testify on this?

Moore: No one signed up.

Leonard: I would like to propose an amendment that we have a report back on the actual market price of the units by june 1. Not the sale price --

November 30, 2005

Potter: No later than?

Leonard: It sounds like June 1 is more than enough time for them to establish that.

Potter: I think they said within 60 days.

Leonard: 60 days, though, might not capture all their increased construction costs. I want to know when they are for sure for sale, what they're asking for them.

Adams: Asking price.

Leonard: Yes. June 1 would be fine.

Potter: Is that a motion?

Leonard: Yes.

Potter: Second.

Adams: Second.

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

Potter: Aye. [gavel pounded] call the roll on the resolution.

Adams: My policy towards tax abatements is to consider them on a case-by-case basis because of who exactly the beneficiaries are in this case, the citizens buying these, and because the estimated asking prices are I think within the affordability range for working folks and because there are opportunities for families with children to occupy some of these units, I vote aye.

Leonard: I do judge these on a case-by-case basis. I think it's a mistake. For myself or the council or anyone else to cast all tax abatements in the same lot because they're not. This is an example of one, if it plays out the way the data indicates it will, and the testimony from the developer this, is precisely why we have abatements, for projects like this, so you have one-bedroom units here proposed to sell for \$99,900 and 50, and the most expensive unit will be a two-bedroom for \$161,950. It sounds like I'm doing a for sale job for the apartments, I probably am. I'm very familiar with this neighborhood, I know where it's located, and I know this is truly a challenged area that fits the criteria I think very well of how we should focus these abatements. So -- and I hope the developer doesn't misunderstand my questions, because if he comes in at or near these prices, this is a fabulous project for people who otherwise probably could never afford to own their own place, and I just can't say more for the pride that people have when they are able to buy their own place. This is also walking distance to light rail I happen to know as well. So this is a great project, I would vote for these kind of projects as I've said before, every day if I could because they allow people to get on their feet and become more productive members of the community, and therefore pay more taxes. It's a sound investment. Aye.

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

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

Item 1489.

Adams: If I could have Maria please come up to the witness box, and Brian, is Brian here? As you're going to hear today in some of the testimony, we are being overtaken by invasive species, including English ivy, blackberry, clematis, Japanese knot weed, and others, and the purpose of this resolution is to begin to get us all working together with an existing resources to make sure we do no more harm, we plant no more invasive species, and as part of our regular work, to get rid of it. It also increases expectations that we partner within the region and we partner with other jurisdictions, such as Multnomah county in terms of their programs in lieu of incarceration, using those programs to help us get a handle on this. We held an invasive species town hall that Maria and Brian worked very hard on, along with folks from the three rivers land conservancy and the nature conservancy, and today is a resolution that just begins to put this on -- put this into people's consciousness. I want to thank the obviously our big partner in this as transportation commissioner and B.E.S., I have responsibility for tens of thousands of miles of right of way, natural areas and parts of the city as well that serve as storm water facilities but clearly our partners in this are parks, planning, and the bureau of water, which have been fantastic in working with us. So I'd like to thank

November 30, 2005

commissioners Saltzman, mayor Potter, and commissioner Leonard for their partnership on this. So if you would give us a brief overview and then we'll take testimony and move on.

Maria Thi Mai: Good afternoon. My name is maria with commissioner sam Adams office, policy director. As the commissioner said, a lot of people were working on this, and we want to thank those folks for their efforts. This resolution is a culmination of those efforts, but it doesn't stop here. The work is really just beginning with -- by approving this resolution. I'd like to just highlight a couple of things of the resolution. What the resolution does is it commits Portland to developing a three-year ongoing work plan to actively integrate invasive weed management into routine operations. Routine operations by the water bureau, transportation, parks, everybody. Parks has done a wonderful job of having an integrated weed management strategy, and others can take the -- follow their lead and work together. And that's one of the things this invasive species resolution does. It also commits to a 10-year goal to reduce noxious weeds through containment, control, and eradication. This goal is aggressive, which is what we need to effectively battle invasive plants. This 10-year mark will be appointed which we can then evaluate our programs and then set new targets. Commissioner Adams also mentioned the town hall that we held. We had over 100 participants from more than 40 different organizations. What this brought is it also brought some new partners, including the confederated tribes of the warm springs, and Oregon state parks, which we had previously not been as actively involved with. So what this resolution does, it's an invitation to bring new partners to the table so we can all work together to weed out invasive species. [laughter]

Adams: Brian worked really hard on this project. Brian is an intern in our office, and while serving as an intern was also elected as chair of the Multnomah neighborhood. Do you want to say a few words that you want to highlight out of your work on in?

Brian Russell: Yeah, thank you. I would -- my name is brian russell, i'm from commissioner Adams' office. I would echo what she said. Originally we intended to focus on city-owned land and city properties, but as it went through the process, we came to realize it's going to take a coordinated effort, and it's not going to be invasive species don't stop at city boundaries or property lines, they grow across. And so it's going to take a community effort. There's -- as evidenced by the town hall, there's a lot of public support for taking care of this problem, and we need to just move forward. And now is the time, because if we wait any longer, it's going to get to a point where it's going to be -- we won't be able to effectively stop the growth of the invasive plants.

Adams: We learned if you just take all the land within the city's boundaries that are swamped with english ivy, it would cover the entire downtown area. Block-to-block, street-to-street. Thank you very much. Good work.

Adams: Most of Portland should already know that sandy dietrich was one of the first people in the city to not only identify this problem, but actually set about doing something about it. And for the past well over a decade has been leading an effort to try to keep forest park natural, and it's an honor to help build on your work and we're very pleased to have you here today.

Michael Mason: Good morning commissioners, michael mason, for the record. I would defer to ms. Dietrich. She's actually one of my heroes, for her work with the no ivy league. I've been very -- i'm very proud to live in the same city she's in, and working so hard to free for ever forest park of the great invader english ivy. So i'll leave it to her if she'd like me to testify first or herself.

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

Mason: Thank you. First of all I want to provide louie pitts apologies, the government affairs and planning director, he was very eager to be here today to applaud this resolution, this effort led by commissioner Adams. Apparently the warm springs reservation roads are a sheet of ice all the way from the deschutes up to the mountains, so he -- I am left to stumble along rather weak compared to louie. But I would just point out that one, I think folks at warm springs are very happy about this step. They're fighting noxious weeds as everyone is in the region. They actually call us the great

November 30, 2005

changers. And when you look at some of the obvious developments since the arrival of the pioneers, the great dams and things like that, you can see why we're called that. But one of the things that's moved silently and secretly that was brought in by pioneers especially is english ivy, and the city has moved aggressively to deal with global warming, which is a huge issue, but even if we get that under control, as i'm sure ms. Dietrich will point out, we won't have any forest left in the city if we can't control the english ivy. And that's just one of the noxious weeds. We're being hammered by english ivy and scoots broom from the east, and blackberry and japanese knot weed from the west. The tribal understands these plants have powerful spirits and requires a major effort to get them under control. So I think the point made by staff about educating property owners in the city is very important, because we won't get these things under control just working on city land. So again, we want to applaud commissioner Adams for bringing this forward, his important work on this, staff's work, and the warm springs tribe is glad to offer their advice from the women elders who are still out there gathering the native plants as they have for at least 10,000 years, glad to offer their advice and memories about the plant communities that existed prior to the city expanding out to the columbia, and in the bull run watershed. And I just mention though it's in the resolution, they would come down here at least twice a year, particularly to come to wapato island, which is now called sauvie island, because it had the great wapato fields, but also to the areas on both sides of the river for the camas fields, the reason camas has that name, before the pigs wiped out the camas, speaking of invasive species, they -- the indians from many, many miles around came down to this area. Thank you.

Sandra Diedrich: Sandy diedrich, 117 northwest trinity place. I'm a proud employee of the city of Portland. Under park city nature and i'm here on leave today to speak to you personally. I went to - - want to applaud commissioner Adams for stepping forward on this issue, but i'd also like to thank mayor Potter and the other commissioners for the interest, encouragement, and support you've all given to this issue. One of the things that's important when we look at the issue of invasive species is remembering that while this resolution and the current discussion is focused on terrestrial weeds, invasive species also includes animals, for example we had an infestation of asian long horn beetle within just a few years, it could decimate thousands of acres of forest areas. We also have other aquatic species, including curious creatures like the mud snail that are having a very adverse impact on recreational areas. But there's another aspect to invasive species as well, and that's that invasive species can be microbes. Invasive path 0 general that's can resolve in a situation like this, or portend a pandemic influenza pandemic such as the avian flu. So it's a consequential issue, and to put it in dollars and cents, cornell university estimates that annually invasive species cost \$136 billion in the united states alone. It is certainly costing the city of Portland and its residents several million dollars in our community. I come to support the intent and the direction of the resolution. When I started working on this issue back in 1994, I put together a short list of 10 most important things to do. Number one, was to get people involved. Number two, was to get ivy listed as a noxious weed so it was state policy. And number three, to get the city of Portland officially on board in terms of intent and policy. So it's really very monumental step that you're considering today. This is not going to be an issue that we're going to have a perfect prescription for. Or that we're going to have a silver bullet for. It's much like recycling. We have to build through education outreach, through collaboration of professionals, and members of community a culture that wants not only to provide good stewardship for our public resources and our privately held land resources, but also to participate and to fully invest in the diversity of our -- of our natural areas, and to have the opportunities for people to make the garden in which we live a healthier place where people -- for people to participate in. I encourage you to approve this resolution. The specific words are not as important as the intent in the direction. Certainly in 10 years we just completed a 10-year assessment of our projects, and a 10-year assessment of the effectiveness of our work, and -- in working with ivy as well as other species. So we found it to be surprisingly effective in terms of

November 30, 2005

what was accomplished in 10 years, and I know that 10 years from now the city of Portland, when it assesses what it accomplished in this 10 years, will not only be surprisingly amazed at what can be accomplished, but will also be eager to start the next 10 years. This is an effort that has to be sustained, but it does provide excellent opportunities for all sectors of the community to be meaningful and involved. Thank you for the opportunity to speak to you today. Thank you for your interest and your support and your encouragement on in issue. Remember, the weeds are tough, but we're tougher. [laughter]

Adams: Thank you very much.

Potter: Could I ask a question?

Adams: Sure.

Potter: One of the things I didn't see on here, is it my understanding that some of the nurseries in Portland still sell some of these weeds?

*******:** Yes --

Adams: Yes, it is -- we have heard that's true. We've also as part of this went out and did some spot checks and we didn't find the actual cultivars that were banned in local nurseries. Part of the work plan we'll be coming back with will make it clear about how we post the 160-odd weed that's have been identified as invasive or plants are that have been identified as invasive and educational and enforcement. The enforcement on this issue, they've never levied a fine. The state, whose job it is to enforce this, has never livid -- levied a fine on anyone ever for selling an invasive species on the list, so part of our work plan with the state will be to, how do we educate better, how do we enforce better.

Diedrich: Mayor Potter, there's science and there's science. There's science which demonstrates what we already know and there's science that helps us deny what we don't want to acknowledge. In the case of ivy, for example, there are over 500 named varieties, and a position that was taken is, one certain is a bad guy, we're quarantining that, but we're not really sure about these other varieties, are they really bad, will they really take over or not? You know, if it wags its tail like a dog and if it parks like a dog and scratches fleas like a dog, it's probably a dog. We have education to do, we have more research to do, but I think the time will come when people recognize that dogs are dogs, roses are roses and that ivy is bad.

Adams: I think the ongoing effort is part of what we want to build in the partnership, odot has taken to planting boston ivy up all the cement sound walls. Currently it's not listed as an invasive species. But it definitely likes sunny places, so the question is, just like ivy was once planted along the freeways, is that something that could jump from the freeway banks to other spaces in the city and become invasive?

Diedrich: And it is nasty. It's also called woodbine. But it's a particular plant that has some -- but it's a deciduous plant, so that makes it ok, right? We have a lot of work to do in terms of building a good culture which will allow us to use good plants as well as to cultivate a good healthy diverse landscape around us.

Potter: Thank you for sticking with it. I think you finally got people's attention.

Diedrich: Yes. Thank you. And partially because of the kind attention and active support that you all have put into this issue as well. I've seen you with your hands dirty pulling weeds, each and every one of you.

Potter: Thank you. Other questions?

Adams: Thank you.

Potter: Anybody else signed up?

Moore: That's all who signed up.

Potter: Thank you. Please call the roll.

November 30, 2005

Adams: I want to thank everyone involved, over 40 organizations were represented at the invasive species, and just a special thanks to brian russell and maria, my staff, for doing excellent work on this. We'll come back to council with an integrated work plan. Aye.

Leonard: Today i've learned about ivy. I always learn something new, and today it's ivy aye.

Saltzman: I want to thank commissioner Adams' office for leading this charge, and good work, look forward to cooperating fully on behalf of the parks bureau aye.

Sten: This is really great. So many volunteers working on this so long, and I think it's wonderful to have this become a little more comprehensive program. Way to go, sam. Aye.

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

Item 1490.

Adams: Is dan here? Dan, would you come forward? I'll make some introductory remarks. This is a resolution, so obviously it's nonbinding but it provides direction based on council discussion on how to move forward to implementing the clean river initiative and discount program. It establishes a 10-year window for the discount. Its purpose is multifold, to extend the life and the life capacity of the \$1.4 billion c.s.o. project by reducing the amount of storm water that would need to go into it and need to be treated. As we go, we're producing more storm water. So we need to get folks to deal with their storm water on site. As much as we possibly can. It will also produce cleaner watershed and all storm water in the city of Portland goes to the willamette river. It makes good on a promise everyone up here has long wanted to keep, that providing a discount helps property owners both residential, commercial, and institutional and others pay for the cost of dealing with their on-site storm water facilities. We've sought to offer a financially sound approach. It is limited to a 10-year commitment, after which future councils will review it. It focuses on getting potential benefits to all ratepayers, and we are also included in this the effort, a new effort put on ourselves and the city to deal with storm water, street storm water, which is the majority of the storm water problem in the city of Portland to deal with that storm water on site within the next 10 years with an aggressive green street program. This calls for the creation of this green street program which we'll come back for. And we're also trying to add value to the fact that we will be out talking to ratepayers by also marketing and putting a special emphasis on people who are economically challenged, especially people who do not speak english as their first language, commissioner Sten, we've incorporated a suggestion that he made in terms of marketing the city's low-income rate credit, and we're also going to be marketing, and we have partnerships developed which you'll hear a little bit about some of the enthusiasm for that today, to make sure that as we talk to households we also let them know about the federal and state earned income tax credit. There are a lot of people to thank for this, a lot of folks up here have been working on this a lot longer than I have. It also requires an annual review and dan and maria, if you would just quickly -- I mean quickly, because we're way over time, sort of the guiding principles just focus a little bit on the guiding principles that this puts into place.

Maria Thi Mai: Good afternoon, commissioners, mayor. I think commissioner Adams, you highlighted most of those. A couple of the -- i'd like to speak to this, is going to be a 10-year commitment, and then that's what the promise is at this time. As the commissioner said this, is available to all rate payers and we're going to do an aggressive outreach and marketing. We've got from now until march of 2006 to be able to do this outreach so that gives us time to get to all people. And we'll have some clear materials to go through this, we'll offer technical assistance, and it will be based on specific criteria, such as having dry wells disconnected downspouts. And we'll go to the ratepayer who is not delinquent on its utility bills, and we'll provide access to inspect facilities a spot inspection. Similar to sort of the i.r.s. coming and just doing a spot --

Adams: But a lot friendlier: And we have to make an appointment. The i.r.s. doesn't.

November 30, 2005

Thi Mai: Yes. We'll contact you. The discount is not transferable. And it's given to a person on that property. And it will be limited to no more than 35% of the basic storm water charge. The retroactive credits will be up to 12 months. From January 1 of 2007.

Adams: I feel very good about our efforts, especially in the area of residential. We've got the proposed application, which is still in draft form, down to one page as promised. Simplified, the criteria, so I feel good that we've exhausted most much the creative options on the residential side. I think there's some more creative work on the commercial side and so we might be coming back to council with some additional clarifications on the commercial side. We've had some conversations with them, the idea putting together a credit system where people who are not eligible simply because of the nature of their property cannot do storm water mitigation would be able to buy credits from others mitigating their fee. I also think I'm looking at city regulations regarding right now what makes -- city regulations make it difficult for joint facilities in the public right of way that allow landlocked buildings and the city together to come up with storm water facilities b.e.s. Has done a great job of piloting and seeing what works in very confined spaces in terms of treating street storm water and private storm water together, so I think there's some code rewrite we could do that will make it easier for the landlocked buildings to achieve some storm water benefit as well. So we've got more work to do on the commercial side, but this sort of gives the general direction from the council of the path that we need to take.

Thi Mai: Can I just add, to come to this resolution we held two town halls and several stakeholder meetings with the business district and specific community groups.

Adams: Questions?

Dan Vizzini: In the interest of time, I won't add anything.

Saltzman: I just had one question. I stepped out of the room for a second. Explain the retroactivity again it? Will be one year from when?

Vizzini: The retroactive credit, if you register and qualify, let's say you do that this summer, and the discount program starts in September of next year, that is, you begin to see out your bill in September of next year, then in that first bill that you get you will receive up to 12 months' worth of a discount in the form of an adjustment or credit on that first bill. So if you have been in the property, you've been the ratepayer for more than 12 months and the facilities have been in the ground for more than 12 months, then you'd see this one-time-only credit calculated at 12 months' worth of discount.

Saltzman: And that is the maximum retroactive credit?

Vizzini: Correct. And the other thing that was done in 2003 was to say that in order to get the retroactive credit, you had to register within the first 12 months of the program as a way of providing increased incentive to get people signed up for this.

Adams: Any other questions for this group? We've got some esteemed guests I'd like to bring up. This issue has been advocated by members of the city council for some time, but there are a couple of people who have far and away been advocates for rational sewer rates and for ratepayers and for folks especially in the middle and eastern part of our city. Dr. Howard Horner, if you'd please come forward and state representative Jeff Merkley. And I just want to thank you for your good work in putting this package together. This really is the result of really hard work on your part, and I'm -- and I think the citizens of Portland are very grateful. Doctor?

Dr. Horner: Thank you very much for the opportunity to come down and hear something that is very, very important to thousands of people in the -- mostly on the east side of town which we think of as the new sewer area. And the new sewer area is one that has been in dispute for some time. Incidentally, before I go any further, I want to just thank the mayor and commissioner Adams for coming out to that meeting that was held at Floyd Light Middle School. You might be interested in knowing that Grace and I, my wife and I have lived in the area since 1954, and so we're pretty well known with a lot of people. And the day after that meeting we had about 35 or 40 phone calls from

November 30, 2005

people who had been at the meeting and they called and said, "was that really the mayor?" "was that really -- ."

Potter: That happens frequently. [laughter]

Dr. Horner: And they were very, very positive. But what went on at the meeting, they very much appreciate the fact that you folks were out there and I think you ought to know that that was an appreciation. Incidentally, the -- what we're about to do in the way of the new discount program will be something that will be very pleased to see happen, and I think that the kind of a sheet that is being used to send out to people is going to be very fine, and I think you have a copy of my remarks. I have two questions that I would like to pose. One has to do with the matter on that questionnaire it says, how many trees do you have on your place and how high are they, and that type of thing. I think the council should recognize that the same thing is going to happen whether you have trees or not. Out in that area there's just an immense amount of sand and gravel, a depth of four to 600 feet, and if a person says, no, I don't have any trees at all, they should not get any less discount, because the rain will all fall on the ground and seep in and follow just as if you had trees and of course with trees, less of the rain will get to the ground. But it won't make a lick of difference as far as how much of the water goes into the sewer. So I would urge you to consider that one issue and the -- I might also say to the council that this -- our business with the bureau has been very traumatic. To the place where I as an individual do not trust the people from the bureau. I'm saying that because it comes after a long time, I served as superintendent of the school district out in, and I recognize all kinds of things come in from people. But if the bureau has previous to maybe this one instance not done anything that the people out there could trust, I think you as council ought to recognize that and i'm saying that even though mr. Vicini is here and he knows this is the way I feel, and I think i'm saying a number of things that the council should hear. The other part of it is that what we're concerned with is that you're going to say yes now there's going to be 35% discount, and the bureau is going to fix some little series of excuses that will prevent them from giving that bureau to the people that ought -- that are that -- that discount to the people who ought to have it. And I know this is an unpopular thing to say, but I feel so strongly about it, I think the council should know. And the other person who has been working on this a long time is our state representative, and i'm sure he has some better comments than I have for you.

Steve Merkley: Mr. Mayor and commissioners, thank you for the chance to testify today. It's 7½ years ago that dr. Horner and I formed the east Portland coalition against unfair storm water fees. And it has been a journey in which we've both been educated about issues, so we've learned a great deal, and about the process of setting public policy. And I think food's resolution really -- today's resolution puts us at third base, which is significant progression towards home plate, and lays out a plan on how to get to home plate. So i'd like to compliment commissioner Adams -- compliment commissioner Adams for building on the work done by commissioner Saltzman and commissioner Sten on taking on this issue, and laying out a path the city can go forward on. I think scoring this one run has been a slow and arduous process, but we're almost there, and I thank you. I would like to ask you to frame this incentive in your minds as part of the green fee tradition, and by that I mean an incentive that encourage environmentally responsible action. It really has two great benefits to the public. The first is it encourage people to retain storm water on site, and that storm water, when filtered through the ground before it reaches the groundwater, results in much cleaner water, and therefore the name clean river incentive is appropriate. And the second is that if we don't have to as a city build facilities to handle all that additional storm water with all the growth that is anticipated in the next 20, 25 years here in Portland, there's huge financial savings to every single citizen. So the small incentive granted to individual citizens who are paying for their own on-site management will result in the long-term in enormous savings to the corporate citizenship as a whole of the city. And so in both those ways it's a very solid demonstratively as well as environmentally wise move. I want to express appreciation for the simplicity of the form, for the planned outreach to low-income

November 30, 2005

citizens on potential discounts and refundable tax credits. On the gracious way that inspections are being planned by appointment, and also on the task force to study street-related storm water costs in general, because it is the other portion, the nondiscounted portion that is driving these fees. Many municipalities pay for the road-related storm water true gas taxes or other strategies, and our storm water fees are rising so fast as a result of having this burden of street storm water management, that it really, we stand out from other areas, and I think having a task force look at options makes a lot of sense. So very good work. We're here to support this resolution. There are a couple points I'd like to ask you to continue to look at as you plan rules to implement the resolution. One is to be very careful about collecting emails. If it's not required to make sure citizens know that, there are two potential risks. One is that the emails are requested through public records request, and I've had a brief conversation with Mark, and neither one of them about whether or not that could be a possibility. Those emails obviously a database of emails for Portland citizens is extremely valuable, people would want it. The second is the accidental release of emails. And would be a big disservice to citizens. A second is, I want to put on record my understanding that the trees and shrubs provisions are there are the anticipated plan is there will be a supplemental and partly to address Dr. Horner's point, that it would -- that the plan is not to isolate part of the 35% discount and say it's based on trees and shrubs, but that if you aren't managing all your storm water through dry wells, if you will, that you might compensate partially for other treatment methods by having mature trees and shrubs, which would make some sense. But that's my understanding, I -- if that's out of sync, I thought I'd flag it. A third is that the application notes under requirements to qualify, plumbing and building permits and inspection reports are required. I'd like to urge you to get that off the required list. It's not under the principles, the guiding principles. Certainly 80, 90% of the homes in east of 82nd, the city has no records of the original building permits, no blueprints. I've looked for my own house, when the county transferred those records, the county either didn't keep them or they were lost. So that is an impossible requirement for many, many citizens. My understanding is that it's intended to -- that it would be helpful to have those if and when people are inspecting the spot inspections, and that certainly makes sense, but it doesn't belong on the required list. And also similar to that, there's a notation that the private storm water facilities are properly sized and maintained comply with all requirements. If that was meant to address today's requirements, very few properties would qualify because properties were built with storm water systems 50 years ago, and there may well be nuances that the size of the pipe, or the depth of the cistern or something that might be different, so -- and just backing up Dr. Horner's point, the general notion is an you want a functioning system, but let's not allow -- get caught up in fine print that creates frustrations and counter to the intention to implement this program. And so those are a list of just things to take a look at as we implement it. And my hat's off to a job well done. Thank you.

Dr. Horner: I have one more point that I'd like to ask. It's more of a question. The question is, when does a fee actually qualify as a tax? The -- and I don't know the answer, and I haven't talked to any attorneys yet about it, but the -- to call the amount that is paid a fee, you'd say it's a fee for a service rendered, and it's out where we are it's a fee for a service that's neither rendered nor needed. So the question is, is it a tax or not? I think it's a fair question, because if it were to be a tax, then we have schools and churches that would be -- would not have to pay that amount, and that's a major problem. I know that the David Douglas system a year ago when I talked to their business manager, the amount of storm water fee that they paid that year was over \$168,000. That's a lot of money taken away from school systems. The same thing would apply to churches. I'm a member of the small church out there, and they have a parking lot, and we are assessed the same charge per square foot out there as they are charged in -- to Meier & Frank or downtown Portland. Which is ludicrous. And if this were thought of as a tax, the church would not have to pay that.

November 30, 2005

Adams: I will actually get back to you. There's court action on that answer to your question that I'll get back to you on, and it's quite extensive, but we'll boil it down and get that to you. I just wanted to -- the email, while you're still at the microphone, the email is a good reminder for us. We'll look into that. The other things you talked about I think are on point. We're going to have to be where we have hilly conditions, it's where the -- where people cannot do -- let us just run under your garden or grass, and if they want to do it they have to buy basically more like human made facilities we'll make it clear that the trees are not -- are an opportunity for them, though, on the hilly parts of town, and also where they can't just let it run free, and they have to get a plumbing permit to do something more complicated to deal with their storm water, we'll make that clear, and we'll share drafts with you so it's clear for you as well.

Dr. Horner: Once again, I want to just express appreciation to the council, and to you and to the mayor for bringing this issue and looking to the fact that maybe it's going to get me finalized before I die. And I'm only 87, so I'm not planning on dying right away, but it has been a long time, and we appreciate very much what the council is doing. Thank you.

Adams: Thank you both for all your advocacy. I'd now like to call up Frank Ray, Jim Harper, and Chris Copca. Because these folks up here are very hungry for. We could be succinct, that would be great.

Frank Ray: Good afternoon, Frank Ray. I chair the Portland utility review board, also known as the purb. We've been briefed about this program. A group of men's met with commissioner Adams to discuss the program. Some much our men's attended the public workshops that were held recently.

We have yet to make a formal recommendation to the city council about this program, but we intend to do so soon. However, knowing that this hearing was happening today, I thought it important that purb let you know our thoughts, so I polled purb members to find out where they stood, and here's what I learned. One of our members is opposed to the storm water discount program for a number of reasons. Five of our six current members are supportive of the storm water discount program because they recognize the importance of encouraging property owners to take steps to manage storm water on site. However, all members have concerns about this program.

Their main concerns are, number one, this program will add administrative cost that's will be fade by utility customers who are now paying very high combined city utility rates. Number two, this program may impose a burden on some customers who want to comply, but for reasons beyond their control are not able to qualify for the discount. Number three, given the uncertainties about how this program will impact property owners, this program should have a shorter sunset, say, five years rather than 10 years. Number four, as the program evolves over time, there is a danger that the discount could become so broad that it would be infect wall, in other words, if the discount applied to nearly everyone, the amount of the discount would be so small that it would no longer pose an incentive for property owners to make the investments needed to qualify. Number five, the very worthy goal of expanding the low-income discount program should be paid for by the general fund and not by utility customers. The low-income discount program is a social welfare program that is more appropriately paid for by general tax revenues rather than through utility rates, which ideally should reflect only the cost of providing utility services. In summary, the majority of purb members give qualified support for the storm water discount program because they recognize the importance of keeping run-off borne pollutants out of our streams and rivers and believe this program can provide property owners the incentives to make investment that's will help the city achieve its goal of compliance with the clean water act. Thank you for giving me the opportunity to speak.

Jim Harper: Mr. Mayor, Jim Harper, executive director for an organization called cash, which is creating assets savings and hope for Oregonians. We have a group of around 53 organizations that are public nonprofit businesses that work to help low-income working families and individuals receive the tax benefits earning -- earned income tax benefit that's they're entitled to. Probably a

November 30, 2005

third by i.r.s.'s estimate of the people that are eligible in the city and the county don't even apply for that. So our mission is to outreach and let them know it's there, to prepare free tax sites so we can come in and help them get that, and create a program, a financial literacy, what do you do if you get \$4,000 back, and how do you use that, and what do you use it for. I'm excited to be here today and to thank commissioner Adams for a partnership that we're putting together where during the course of the work that we will be doing talking with low-income working families we'll also be handing out materials and literature and we'll train our aarp tax preparers to talk about the storm income credit, discount. So we think that working together we'll get some people that we can work with and we'll put the message out there that so by the time this comes around next spring, there will be more knowledge about what we're doing. So I really thank you for this opportunity.

Adams: Thanks for your -- thanks to you and all the other organization for your partnership.

Christopher Kopca: It's almost good afternoon. Good afternoon, christopher kopca. I'm going to speak on behalf of Portland business alliance and boma. My comments may run a few minutes -- a little longer than three minutes, but I hope you'll bear with me. We've tried to merge our testimonies. We have worked together in evaluating this proposal together that's before you today. We understand there's significant pressure to enact the storm water program. However, we remain troubled about the impacting the program on ratepayers ineligibility to disconnect as well as the long-term preliminary indications of this on our storm water system. For a number of reasons the proposal raises issues of equity, fairness and long-term system viability. First, the real financial impact of those parties remaining connected to the system is not the 35% discount fee offered, but actually is closer to 50% of the potential income reduction due to the number of ratepayers projected to qualify for the discount. You should also know the first year cost of setting up the discount program alone is \$2.4 million, and that is \$500,000 each year thereafter. So it's a fairly expensive program to manage in its own right. While a disconnect incentive program may be in order, certainly anything approaches this type of cost redistribution was never contemplated or discussed by most, it is not likely sustainable. Second, the fact is that most businesses and some residential companies -- customers are simply unable to disconnect from the system, whether they want to or not. For example, a downtown property cannot simply disconnect from the system and allow storm water to run down the street. These ratepayers will be penalized for something beyond their control. Third, three-quarters of the storm water comes from street runoff because we have not found a way to comprehensively deal with the financing, the impact of roads to the storm water system, the expense is simply shifted to the adjacent property owner. Very simply, what the discount program does is transfer costs and transfers costs in a big way, to those who remain on the system. It offers discounts to those that are eligible at the expense of those who are not, forcing ineligible property owners so-to-subsidizes discounted ratepayers, it's is not tied to the -- raises again concerns about the long-term stability of this system. We would suggest that this subsidy be funded by the city as was previously suggested, possibly city utility tax, or alternatively, by volunteer contributions, and I would suggest something like the Oregon heat program might serve as an example, where people make contributions so others can avoid the cost. Water and sewer rates in the city of Portland are already among the highest in the country. This program only exacerbates this problem, and further adds to the cost of business within the city. B.e.s.'s own assessment projects operating and management expenses of the overall storm water program to grow at 8% each year for the next 10 years. That's a staggering sum, 8%. The city must find a better way to deal with storm water fees. Within five years even ratepayers who receive the discount will see their storm water charges have crept back up to be equal or greater than before the program began. The question whether the incremental benefit to those eligible for the discount is worthwhile given the tremendous burdens it places on the remaining ratepayers. The resolution before you is essentially sets up a 10-year operating program or window as commissioner Adams used the term, we also would recommend that that window only be five years. We think it's a very

November 30, 2005

long time to make this commitment, and we don't think that all the fiscal analysis has really been completed to where you can be comfortable with that kind of long-term commitment. There is ever chance rate pay letters disconnect from the system even more rapidly than projected by b.e.s. Given the sight size of rate increases every year. We could hit a crossover point where there are not sufficient numbers of full ratepayers to support the full cost of the storm water system. In reviewing today's resolution, I would like to point out some areas that may offer promise if this program is to go forward. That is, if you act on it today. We're hopeful commissioner adds apples' ideas of trading storm water credits or enacting new solutions will provide viable options for businesses that cannot feasibly disconnect from the system today. Finally, we support commissioner Adams' recommendation to put together a task force to review the current system. We suggest the task force start meeting immediately to evaluate turn test. It is essential with -- we find a long-term solution to ensure a sustainable system. I'd like to point out one other thing. There are times when city policy doesn't jive together, and i'm working on a project which is beyond these organizations, where we see this happening. It's a project we've announced, it's by the jake's building. And we proposed five levels of below grade parking, and we put it below grade to be consistent with public policy, which encourage it to go below grade. We're going to get hit with a pretty significant storm water fee for having the parking go that far below grade, because do you capture water at that kind of elevation. So you are penalizing people for trying to do the things that the policy calls for. And I would hope you might look at where have you those kinds of policy inconsistencies. And again, that's not a remark about these two organizations, but an experience I lend you about trying to make sure that policies don't conflict with one another. Thank you very much.

Adams: Thank you. Like I said, I think there's still opportunities for -- on the commercial and institutional side that we'll continue to meet, even before the formal task force gets together to see if there are other things we can do to help.

Saltzman: Your figure of costing \$2.4 million to operate the discount program, is that figure supplied by us?

Kopca: It's a b.e.s -- it's \$2.4 million the first year to set up the program, and I believe it's \$500,000 per year after that. You might ask -- I believe that's the number.

Saltzman: I think that's -- that strikes me as high. I'm not -- I think -- i'm asking commissioner Adams, that something we ought to fake a look at, with our new billing advertise item in place, it doesn't -- I can see an initial high start-up cost, but that sounds high.

Adams: We'll get back to council, we'll have more conversations about that.

Sten: I just want to get on the record, I think your requests are totally reasonable. I just want to be clear on my own position that you might take away from "this is your life" was done hastily from your comments, and dr. Horner's 87, he was not in his 80's when I held my first hearing on this. So I think it's been debated forever, beyond forever in my mind. I'm not going to open a dialogue up. I get the desire to come back into this, I just want to be clear on the record that there's been -- I can't even again to -- begin to tell you how many meetings and notices on this project, and it's been adopted by the council actually three or four times and put off for other reasons. It really -- it is difficult, because it's a cost shifting issue, but issue is not -- is people don't use the system at all and get charged for it. That's the issue. I just want to be clear this, is not a new topic.

Kopca: Can I offer -- I know you don't want to debate.

Sten: Sure.

Kopca: One thing has happened, every property owner has basically picked up the bill for streets. Streets constitute 75% of the runoff. And so even though someone may disconnect their downspouts --

Sten: It's a one-third discount because they represent two-thirds, and i'm really knowledgeable about this, and I think that's a really generous -- there's a better argument that the discount should be

November 30, 2005

bigger than smaller. I don't think -- if you really study where the runoff goes. It was a compromised decision to make it a 30% discount.

Kopca: Thank you.

Adams: Thank you all very much.

Lise Glancy: Good afternoon. Lise glancy, representing the port of Portland. Storm water rates are a significant issue for the port, with over \$1 million of storm water charges in 2005, and costs are expected to grow to \$5 million in 2014. Yes, the port shares a concern of business and other interests about storm water rate increases, yes, rate increases -- rates lynn crease for some with discount program. However, with or without the discount program, storm water rates are increase. Current rate projections do not include the costs of some regulations, lower willamette clean-up and other requirements. There has been five years of focus and council and b.e.s. Action in support of the discount program. Commissioner Adams has spent past four months trying to refine the clean water discount program to be sure it's equitable and accessibility as possible. His outreach has been commendable as well as that of commissioner Saltzman. It's time to move on and make good on council's promise to implement a discount program. It's time for council and ratepayers to collectively focus on the larger issue of sustainability. We're edge -- we urge council in adopting the principles and goals and directives for the discount program to explore all ways to make storm water rates more sustainable. We appreciate commissioner Adams for his efforts to date in this regard, as proposed in the resolution we recommend that council convenient a task force of residential, business, environmental interests, schools, other ratepayers to promote sustainable storm water rates, and we propose a number of ways to do that, including looking at zero percent federal finance, advocating for federal funds, evaluating the whole public right of way storm water cost and other ways of financing that, as well as recommending costs controls and utility management, including but not limited to the lower willamette clean-up. The port is committed to participating in this effort. We've been at the table for the past five plus years, i'm figuring it's about a quarter of dan's professional life. We thank you for the opportunity to comment today.

*****: A quarter?

Adams: Thank you for your partnership. It's been great. Mr. Caps.

Doug Capps: Members of the city council, i'm doug caps, rent can Portland public schools today. In the audience with me is nancy bond, the resource conservation specialist at p.p.s. And has worked closely with commissioner Adams ' office and -- Adams' office and b.e.s. Thanks for the opportunity to speak for a few moments. We're a strong supporter of the clean river incentive and discount program, particularly the goals of better storm water management. And we applaud commissioner Adams for refining the program to make it work even better. Our support for these goals goes beyond words. We've made some pretty dramatic changes, nearly after of Portland public schools over 40, are -- we're managing storm water on site using different methods, things like bioswales and downspout disconnects and planters to catch rain water and so forth. B.e.s. has been very helpful. We have a nice partnership with b.e.s., helped with us grants and technical assistance, the sustainable storm water program, community watershed stewardship grants, and we're grateful for that partnership, and we look forward to that continuing. We have a program actually using b.e.s. supplied curriculum, educating our kids about storm water issues and management techniques, particularly in those schools where they can observe the systems at work. I also want to say our work goes beyond managing our own storm water impacts. We partnered with b.e.s. to provide property for constructing large storm water systems that solve city infrastructure issues. Niece systems have been established on school district property, for example, at glencoe elementary a large bioswale captures storm water runoff from adjacent streets and takes pressure off the storm water sewer system. So we're helping to provide a green solution, getting away from the pipe solution, because this is a less expensive solution for the city and we're willing to expand on that program. So far, so good. But the resolution has a problem for buildings with

November 30, 2005

internal downspouts, as you've heard, and many of our schools are constructed this way. And that means we can only go so far with some of our structures, and capturing storm water from those buildings is impossible. That doesn't mean we won't do what we can do to catch which your storm water at those sites from impervious surfaces like parking lots, and we're doing that, and we need program to give property owners some kind of credit for doing all we can do. This is important because of the concern that we have about rates. We currently pay about \$1.8 million for storm water management. And different rate increase scenario was amount to hundreds of thousands of dollars to the school district. And as p.b.a. and boma have pointed out, Portland public schools will be paying even higher costs because of the cost redistribution that occurs through this program. So i'd ask the blunt question, even though it's a little rude, do you really intend to take out of the classroom money out of the classroom to subsidize ratepayers who qualify for the rate discounts? I don't think this is a recommendation, just an acknowledgment. It does say the city should exempt schools and churches from paying higher rates if they are unable to make improvements to qualify for discounts. Another approach might be that we'll continue to work with commissioner Adams and b.e.s. to accomplish what we can accomplish with some creative solutions, as he's already pointed out, and we can come back to the council with full support for the implementing components of this program. Thanks for your time today.

Adams: Thank you.

Potter: Thank you for being here. Please state your name when you speak. You have three minutes.

Randall M. Phipps: Thank you. Randall phipps, mr. Mayor, commissioners, I live over in southeast Portland, 57th and duke area. 10 years ago the, roughly, the area was annexed from the county, duke used to be the county like. And as we were brought into the city, as we were given blacktop streets because at that time we had dirt roads still, some areas still do in that area, particular property i'm at, we had a septic in the front yard uncustomer the driveway, and a cistern in the back in the back portion of the house. We still have the cistern, we've tied into your sewer system, and i'm getting charged for rain water that i'm not putting into the street. I've got a two-car garage -- excuse me, driveway, roughly 30 by 40, qualify for half the surface hard surfaces street area and all that, but it's costing me almost as much in rain water as it is in process can for the sewer. That doesn't make any sense. And I read in the newspaper yesterday it tells me i'm going to get a possibility of a 35% rebate. You've been charging us ever since we tied into the sewer back around 1998, 19 nip, whatever the cut-off was for those two tie-in voluntarily or it would be done for us. And we've been paying that all along. My son-in-law, who i've tried to get to come down here and speak to you people about this kind of situation, hasn't done that, and he's afraid of city hall in that he's vietnamese, he grew up over there, he came here, he's afraid of the cops, he's afraid of city hall, and he's just lately moved out of the county. So there goes your income tax money that the county would have had, and I have taken over the property, and now i'm there. I'm not afraid to come down and speak to you gentlemen. I have a problem with that. I'm disabled, retired g.i., I work a side job, i'm on a limited income. And you're going to hit me for \$40 something in rain water, and didn't even rain in august and september. I'm confused. Be glad to answer any questions.

Potter: Questions?

Adams: Thank you, sir.

*******:** Thank you, gentlemen. Good day.

Potter: I was look for the financial impact, and I couldn't find it. Is there a financial impact statement on this?

Adams: Do you want to speak to the start-up --

Vizzini: Yeah. The estimates that we worked up include about three-quarters of a million dollars in computer system improvements in this fiscal year that will link the way we track the discount

November 30, 2005

registrations through and get them posted into the new utility billing system. So of the 2.4 million, three-quarters of a million roughly is for one-time-only information system improvements. The rest of the costs are broken down into start-up costs in the outreach marketing technical assistance areas in this fiscal year, primarily in the spring going into the early summer, and then the full program running in the -- next fiscal year, 2006-27. So the 2.4 million is one-time-only start-up costs, plus operate can costs for the first 18 months of the program, and those 18 months we're anticipating to be the most impactful months in terms of the sheer volume of contact that we're going to have with customers, both in the field and through the call centers and through our technical assistance program. After 2006-2007, we are anticipating that most of the ratepayers who are going to register and qualify are going to come in in that 18-month period and then the program is going to fall off to a kind of background level, and that's why the budget impact estimates a reduction in staff, a reduction in operating costs in year three, in fy-2007-2008 and into the future.

Adams: And I would just say that the resolution today does not lock us into that particular budget, given everything else. I haven't had a chance to sort of work the numbers over, so we have to come back to council with ordinances and everything else.

Vizzini: We have two things to do. We have a budget adjustment that's going to need to occur dignity village.

Leonard: We have council again at 2:00. And i'm sorry to erupt. I've really heard enough.

*******:** Sure. That's fine.

Leonard: I don't know if others want to continue with. This it's time to move on.

Potter: I would like to know what the fiscal impact is on how this money is going to be picked up.

Leonard: You asked that question five minutes ago and I have yet to hear the answer. I'm hearing everything but.

Adams: The physical impact is written up in great detail, and we -- this resolution if approved moves us forward to begin to finalize those rate impacts and we have to come back to council to get that specific, those specific budgets approved, and we'll go through it at that time in excruciating detail, and you can decide to approve or change it.

Vizzini: The resolution includes a whereas, and it resolved on the costs of the program, and the rate adjustments needed to accommodate the program.

Adams: And we'll come back to council to get those approved. Thanks, dan.

Potter: Call the vote.

Adams: I want to thank jim, dean, dan, bob, everyone who testified, everyone up here on the city council has had an opportunity to have input on this. We still have more work to do, but this moves it forward. And I want to -- I look forward to the work. Aye.

Leonard: I think commissioner Sten is right this, is the third hearing on this. I've been involved in two of them since i've been on the council, and i've been involved in the third sitting on the other side with representative merkley and dr. Horner at the original hearing. It disturbs me not a little bit to have a man of dr. Horner's background and standing in our community as a retired superintendent for david douglas schools, to sit up here and tell us of the horrible treatment he has had in working on this issue. And I don't take his, while I hear some criticism from some members of the community I take with a grain of salt, I do not with dr. Horner. It disturbs me not just a little bit. I wish could I sit here and assure dr. Horner there was a misunderstanding. Unfortunately, i've had a similar interaction with some of the same people dr. Horner has had, and have come to the same conclusion. I am convinced this program and the controversy around it would not have occurred if we on have had a more professional approach, that followed the direction of prior councils, that has yet to happen. And if history serves as any teacher to us, within a year the bureau of environmental services will behave as though this resolution did not pass. I don't know how to express any more of my deep disappointment in the behavior of the top management with the bureau of environmental

November 30, 2005

services on this subject. And it has caused me to lose confidence in the numbers they give, in the projections they give, and I don't know how to resolve that. I don't have the bureau, so I'm not in the position to do what I think should be done. But I do think the community expects better, I think both sides deserve more than what they've gotten out of this discussion, and I'm disappointed that yet again we're here discussing this. Aye.

Saltzman: Notwithstanding the long time to get to here, there is valid public policy behind the storm water discount, and that's why myself and commissioner Sten originally sponsored this back in the year 2000. It's an important element of our strategy for dealing with water quality issues that confront this region. Storm water is the largest source of pollution of our waterways today. It's not factory discharged pipes, it's storm water, what washes off our roofs and driveways and streets in that storm water. So there is a cost, there is a legitimate infrastructure cost to dealing with storm water. And the management fee has been the way the city has imposed its cost recovery for that infrastructure system. Nevertheless, we want to encourage people to manage storm water on site, and many people east of 82nd, not everybody, but many have been doing that from day one. But the potential for many, many more to do that with an economic incentive of up to a 35% discount is now going to be available to them. And that's an important powerful commissioner incentive. We need to marry commissioner incentives with environmental objectives wherever we can, because that's where we get the most results for our dollars. And I think -- I understand the problems the commercial sector faces in not having options, but as I've said to them in many meetings, sometimes not having options is not having options are currently economically viable. The whole point of something like a storm water discount is to change the paradigm of what's economically viable. So should things like green roofs become viable strategies for controlling storm water runoff whereas today they don't pencil out. We're trying to change that economic equation to make these things pencil out to achieve a larger, greater public objective, and that's to keep our rivers and streams clean by keeping storm water managed on site. So I think this is a valid public policy goal. It's taken 7 1/2 years for us to get there, and I don't put the blame entirely on b.e.s., there's been a lot of logistical issues with respect to changing over to a new billing system and everything like that. And I do look forward to the day when this finally will be available soon. And I'm proud to support this. Appreciate commissioner Adams and b.e.s. and the persistence of representative merkley and dr. Horner, I enthusiastically vote aye.

Sten: There's a lot here. I think I'll stay out of why it took so long. There's -- that's almost a religious point of view in the sense you can't convince anybody of what's actually happened. I actually had a meeting quite like commissioner Adams and mayor Potter's at the Howard Horner auditorium at the school, I'm pretty sure this was in 1997, and with all due respect to the organized interests who have staff and lobbyists, I almost never say that this because it's my job to meet with the different interests, but if your staff have not met with the interests east of Portland -- on the east side of Portland, I'm not interested in your opinion. You've got to hear what's going on out in and think about it. All of good utility economics, and I do know something about this, are based on cost of service principles. We cannot maintain an argument that the people who don't use the system at all should pay the full freight. That led to a long discussion of, ok, what's a fair discount, and the reason a fair discount is not 100%, and believe me, that's where we started with that representative merkley's constituents, as Chris said, a huge chunk, of the storm water fee pays for the water that comes off the roads. And I'm going somewhere with this, which is, I don't think there's an argument that a citizen who's don't even have a combined system should pay for the runoff from their property, which is what's designated to be the thirds. What I do think is that the runoff from the streets has to be dealt with somehow. The -- somebody has to pay to deal with that. It's a public cost. The way we decided to pay for that historically may be rational, but it doesn't make sense, which is you pay your share of the road's runoff based on how much concrete you have on your property. So, for example, a church that has a big parking lot filled up on Sundays pays 10 times as much as a 7-

November 30, 2005

eleven who has the cars coming in and out and use -- and is responsible for way moore road use. The way to fix this, and i'm not saying it's going to be easy, is to look at other funding source that's are more tied to the use of the roads. Obviously the roads have problems, but over time you shouldn't be paying the cost of the roads based on your impervious surfaces, but based on your impact on the roads. That would be an interesting thing to look at for the port. I don't know how that would play out for the port, but we have to look at -- even though i'm having your -- chris, we do needs more work to look at. This i'm going to push to us think a little more broadly than strictly arguing about cost redistribution, because I any cost redistribution, while being tough is not a justification for continuing a patently unfair system. Looking at different ways to fund this cost I would be very eager to spend time with you on. With that I support this and I want to thank sam for -- he's the third commissioner to take this on and perhaps it's what we needed. Aye.

Potter: I think that commissioner Sten and others make good points about this ordinance. Is it a resolution? Resolution. And my big concern is that we don't right one wrong and create another. So I want to make sure as we move into this that we're very careful about how the reapportionment occurs and try to be equitable, I think that east Portland has been not necessarily patient, but at least forbearing in terms of how they've considered the actions of the city council. And I think their time has come, and as we move forward, I would hope that entire system, and I can't remember which of the speakers said that, it's one of these notes, we really need to look at the entire system and figure out, what is an equitable way to distribute the cost of such systems over the entire community? And i'm not sure this is going to solve it, but it certainly will be a step in the right direction. I'd like to thank commissioner Adams and the previous commissioners for their work on this and I vote aye. [gavel pounded] commissioner Adams, what was your recommendation?

Items 1491 and 1492.

Adams: I propose for items 1491 and 1492 that we continue them to next wednesday.

*******:** I'll accept that.

Potter: Let's see. I don't hear any disagreement. Shall we -- what's the next item?

Leonard: 1493 -- excuse me. 1493, which we could --

*******:** We could continue these until 2:00.

Leonard: Ok.

Potter: 15 minutes. Ok. Let's do that. Let's take a very quick break. We're adjourned until 2:00 p.m.

Sten: Would you be open to doing a 2:10 start, which would not inconvenience our audience too much.

Potter: I think that would be reasonable. Thank you. [recess]

At 1:40 p.m., Council recessed.

November 30, 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.

NOVEMBER 30, 2005 2:00 PM

Potter: Please read the next item. It's 1493.

Item 1493.

Potter: Who's going to speak to this issue?

Moore: I thought Casey was going to explain the amendment.

Potter: Hi, Casey.

Casey Short: Mayor, members of council, Casey short from financial planning. I'm here to speak to a technical amendment to this ordinance from what was originally submitted. It's a very minor matter. When the ordinance was originally submitted to come in for last week, it committed the city to pay this contract in the 2005-2006 and the 2006-2007 budget. We don't have a 2006-2007 budget yet, so I just asked the water bureau to drop the reference to 2006-2007, put it in their budget next year. That's the nature of the amendment. As far as the specifics of the program, I'm not here to speak to that, because it's not my bailiwick.

Potter: Do you have the ordinance in front of you?

Short: I do not. I've read it.

Potter: Is there only one reference to 2006-2007 in here?

Short: There was a reference in the now therefore the council directs, and the second one that referred to 2006-2007 that should be out.

Potter: There's two references actually. One is in the council finding and then the other one is the council directs, and both of them have the 2006-2007 budget references in them.

Short: Ok.

Potter: Maybe you could -- we could skip over this.

Short: Ok. I'll take a look at it.

Potter: Take a look and get back to us, because this is an emergency vote.

Short: You need four anyway.

Potter: We need at least one other commissioner.

Short: Ok. I'll be back.

Potter: We'll skip over that. Let's do 1494 right now.

Item 1494.

Saltzman: I'll just speak to this. This is a contract we have with Portland State University and the children's investment fund to evaluate the effectiveness of some of the early childhood programs that we invest in.

Potter: Ok. This is a nonemergency. Is there anybody here to testify on this one?

Saltzman: No. I told them earlier in the day they didn't have to be here, because it was getting late.

Potter: Ok. We're on 1494. And does anybody have any questions? Because this is a nonemergency, it moves to a second reading. So what's the -- will it be next week, Karla?

Moore: Yes, December 7.

Potter: Ok. And item 1495. It's the second reading and vote only.

Item 1495.

Potter: Now, which is this?

Moore: 1495. It's a second reading.

November 30, 2005

Potter: Ok. I have another -- ok. Vote only. Please call the roll.

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

Potter: Aye. [gavel pounded] 1496.

Item 1496.

Potter: Commissioner Saltzman, did you want to describe this?

Saltzman: This is an extension of an existing contract we have with pepsi at the parks and recreation facilities. We are in the process of doing an r.f.p. to solicit other sponsors, but in the meantime, while we put together that r.f.p. process, we wanted to extend the current contract for four more months with pepsi.

Potter: We're on 1496. It's to extend the pepsi contract with Portland parks for four more months. Any questions? This is an emergency vote. I understand you got a program in mind to change that.

Saltzman: You can respond to the r.f.p.

Potter: Is anyone signed up to testify?

Moore: We had the hearing last week for this.

Potter: Ok. Vote only.

Adams: So what you're saying is, this is the next generation of contract?

Saltzman: Yes.

Potter: Roll.

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

Potter: Aye. [gavel pounded] return to 1493.

Item 1493 (continued).

Casey Short: Thank you, mr. Mayor, members of council. Casey short again. In number four of the -- the council finds, there's reference to the total amount of the contract and the water consortium's budget. I've spoken with Kathryn of the city attorney's office. Both of us are fine with leaving that reference in there because it is a finding and not a directive, and because it talks to the consortium's budget, not the city's budget. My concern here was protecting the city budget, making sure we were consistent with budget law. Another minor amendment in that same number four that changed the number from 57,591 to 52,591. That was a typo. All the documentation refers to the \$52,000 number. There's water bureau staff here to speak to the program itself if you have any questions about that. Or if you have any other questions about the --

Potter: How does the -- how does the change read, then?

Short: The change -- there are two changes in this amendment. One is in the council finds number four, the change is 57,591 to 52,591, correcting a typo. In now therefore the council directs b, the words and f.y.2006-2007 are deleted. So it reads the commissioner of public safety and auditor are authorized to withdraw and deliver checks to water bureau's f.y.2005-2006 budget. The amount in 2006-2007 we presume will be included in the water bureau's budget request for next year, and that will be paid then when it's appropriate when we have a budget.

Leonard: So do we need to amend it to reflect that?

Short: Yes. I believe that's been handed out.

Leonard: Ok. I move the amendment.

Saltzman: Second.

Potter: Call the roll on the amendment.

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

Potter: Aye. [gavel pounded] any questions regarding the ordinance? Anybody signed up to testify?

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

Potter: Ok. Call the roll. It's an emergency vote.

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

November 30, 2005

Potter: Aye. [gavel pounded] I think the morning agenda is now done. Is that correct?

*******:** That's correct.

Potter: Ok. Let's move to the 2:00 p.m. agenda.

Item 1497.

Chris Dearth: Good afternoon. I'm Chris Dearth the city's program measure 37 manager, and i'm here to present the staff recommendation on two measure 37 claims, the first one being brought by mr. Lowell patton. To put this claim in context for you, it's in southwest Portland in the collinsview neighborhood. Claimant is mr. Lowell patton. The location is on southwest boones ferry road south of the intersection with taylor's ferry road. It was submitted in june of this year. The compensation demanded is \$1.38 million. And the preferred resolution is a waiver of the regulations. The claimant has provided us with a formal land use application of any sort, but he did provide us a few weeks ago with a proposed site plan, which you see here. There are two properties. One on the north, the sort of triangular shaped one and a smaller one on the south. There will be a better outline later. But what I wanted to point out to you was that the claimant has proposed eight lots on the northern property and four lots on the southern property, and it is a rather steep property. There's an 80-foot drop from the top to the bottom and a slope of well over 50% on portions of the property. The regulations -- regulations challenged include chapter 33.012, not in the current code, so we're not certain what that relates to. Chapter 33.430 which relates to environmental zones, and those regulations listed there are those specific ones that are cited by the claimant in his application. Chapter 33.480, the scenic resource zone, and specifically the height restriction. And chapter 33.650, formerly the environmental concern zone will consider this as part of the current environmental zone chapter, because this one is outdated. The statewide planning goals and the urban growth boundary were also claimed against, but we will leave those to the city - the state. The claimant has also filed with the state. And they will consider the state goals. Give you a little property history, the properties were both purchased by mr. Patton in 1973. You can see there tax lot 4300 in the north. Tax lot 100 in the south. They have streams running through them. They are adjacent there to boones ferry road. In 1988, mr. Patton transferred the title of tax lot 4300 to another individual, and retained the ownership of tax lot 100 in the south. Then in 1991, the city placed a scenic overlay on the property, 100 feet from the road. This goes 100 feet from the road, not only on tax lot 100, but the all the properties along the road there. And in 1992, the environmental zone was enacted by the city council --

Adams: What's the scenic designation? What's the significance of that?

Dearth: It's a scenic corridor, and it provides certain protections for -- to -- to I guess protect the scenic views from that corridor. And i'll get more into specifics on that a little later in the presentation. The environmental zone that you see there in the light crosshatching is an environmental conservation zone, laid on this property and adjacent properties. And then in 1992 the claimant transferred -- or received the title back on lot 4300, and therefore we conclude that his ownership dates from 1992 for this -- for tax lot 4300, the ownership dates from 1973 for tax lot 100 in the south. Measure 37 allows for several exemptions. One of them having to do with ownership date. Section three states that the action not apply to those regulations enacted prior to acquisition of the property by the owner. So we have concluded that the scenic and environmental overlays were applied prior to the date that the claimant reacquired title to tax lot 4300, and therefore these are exempt for tax lot 4300. It also -- measure 37 also allows for exemptions having to do with public health and safety. Section three again states that the regulation shall not apply to those restricting or prohibiting activities for the protection of public health and safety. The environmental overlay zones that I was speaking about were enacted in january of 1992 as part of the southwest hills resource protection plan. As part of that plan, the council made several findings, one of which included that the plan protect significant resources in areas of steep slopes, unstable soils, and floodplains, and encourages the shifting of development to other portions of lots which

November 30, 2005

are more easily built upon. Council also made an emergency declaration as part of the plan, which stated in part the council declares that an emergency exists because the area covered by the plan contains steep, unstable slopes, susceptible to landslides. Development without the controls required in this plan will result in erosion, landslides and threats to public health and safety. So we think it's very clear that the council had in mind protection of public health and safety when it passed these environmental zones on this property, and so we went to examine the environmental regulations that apply to this to see which ones -- which pieces of those clearly protect public health and safety. And we conclude that several, including disturbance regulation, resource and water body setback requirements, maximum tree cutting regulations, maximum front building setbacks, and setbacks and maximum disturbance regulations for streets and other linear facilities are clearly directed toward protecting the public health and safety. There are regulations, though, which do not clearly protect public health and safety, and would still be subject to measure 37. And those include planting of native vegetation, the minimum front yard setbacks, fences, parking and truck area buffers, exterior lighting and exterior storage and display area buffer. These we conclude, since they do not protect public health and safety are still subject to measure 37, and we will now examine whether these pose a restriction of use on the property, which is required to get a claim on measure 37. We don't conclude, however, that the environmental zone regulations, which were not subject to public health and safety exemptions do limit the desired number of lots on the property. We conclude that the claimant can still potentially develop the four lots on tax lot number 100 as he desires. And we conclude that the scenic zone restricts height of buildings in a view corridor. Commissioner Adams, this is, I think, what you were referring to. The height of buildings, which is specifically cited by the claimant in his application cites the height restrictions. Those apply in a view corridor. This is a scenic corridor, and the height restrictions don't apply here. So those will not be subject to measure 37. So we conclude that these regulations do not restrict the use of tax lot 100. Then we move on to see whether the -- the regulations which are not exempt in fact can reduce the fair market value of the property for tax lot 100, and we conclude that they do not, because they don't limit the density on the property or the number of units that the -- the claimant can potentially develop on the property. So in conclusion, for tax lot 4300, that's the northern property, the challenged land use regulations are exempt because they were enacted prior to the ownership of the property. And for tax lot 100, the scenic height restrictions do not apply. The environmental development standards protecting public health and safety are exempt for reasons I explained. And the environmental standards, which are still subject to measure 37, do not restrict the use or reduce the value of tax lot 100. So therefore our recommendation to you would be to deny mr. Patton's claim for both tax lot 4300 and tax lot 100. I'd be happy to answer any questions if you have any.

Potter: Questions?

Adams: Again, scenic, what exactly is the definition?

Dearth: I have to admit i'm not an expert on this.

Adams: I've never heard of this scenic thing.

Sarah Radelet: Sarah Radelet, Bureau of development services, senior planner. The scenic overlay is applied in a variety of situations. There are two major situations. One is a corridor where you're driving or walking on a road and there's visual amenities to either side of you. Usually it's a forested corridor like boones ferry road. You're driving down there, it's very treed. The goal of the overlay is to maintain that treed appearance. So that overlay limits some tree removal in some circumstances. The other situation where the scenic s overlay is applied is for a view corridor. If there's a view of mount hood, there's a view of downtown, there's limits on heights of buildings that can be built in those specific view corridors. In this case the applicant cited specifically a height restriction, which there's no specific building height restriction for this sort of corridor.

November 30, 2005

Adams: Thank you.

Potter: Any other questions? Thank you. Could the claimant please come forward? Thank you for being here, folks. You have 15 minutes.

William Cox: Thank you. Mr. Mayor, commissioners, my name is William Cox. I'm the attorney for Mr. Patton, who is the fellow on my left -- on my left. And I have on my right Mr. Harvey Watt.

The issue really before you is whether or not Mr. Patton owned 4300 from 1973 to current. The staff took the position that he did not because there was a transfer of ownership in their minds in 1998 when for lending purposes Mr. Patton gave to Mr. Watt a deed, and that deed was to secure a loan that Mr. Watt made to Mr. Patton. I would refer to you that measure 37 defines an owner as the present owner of the property, and I want to highlight or any interest therein. Throughout the time that Mr. Patton had borrowed the money from Mr. Watt, he paid the taxes and interest on a note that was underlying this, that had originally come from U.S. National Bank. I explained this all in a September 27, 2005 letter to Mr. DeArth. We also included an affidavit from Mr. Watt indicating that it was never his intention, nor did he actually believe he owned the property. The staff has decided not to accept that affidavit, so I have Mr. Watt here today to give -- tell you that as a sworn statement, if you need, I don't know why the staff won't accept the affidavit, but I would like to have Mr. Watt tell you in his own language what was the series of transactions that led to this 1988 to 1992 hiatus where the staff claims Mr. Patton had no interest in the land.

Harvey Watt: Lowell needed some money, and I was able to go to the bank and sign the note with him. That way he was able to get the money. I was responsible with him to repay it, which I did, and then later on he with me, but I had no interest in it. Lowell and I have been friends since we've been sophomores in high school, and he was in trouble. I wasn't -- I wasn't looking for land like that. I'm living in Bend at the time. And it was a situation he had that I could help him out with, and that's as simple as that.

Leonard: Who was registered with county as the taxpayer? I got a property tax statement from that era, who would have been on the property tax statement?

Cox: I believe it would show Mr. Watt. But that was always just forwarded to Mr. Patton, who paid the taxes. And we have some correspondence to that effect, but -- correspondence to that effect. But that answers your question. As far as the county records show, they sent it to Mr. Watt.

Leonard: If I went and got property tax statement from the house I live in now, it would show me as the owner. I'm far from the person that owns -- or the entity that owns that house, however. The bank owns it. But my name shows up on the property tax statement. So why would he borrow money and then his name show up on the property tax statement?

Cox: Well, this is a problem that we're all having with measure 37. And that is what is the definition of an interest in land. The local government attorneys have gotten together, both state -- or both state, local and city -- state, county, and city, and have basically concluded that if it doesn't show on the title it's not an interest in land, which is clearly erroneous. They've ignored such things as the marital interest. They've ignored such things as equitable interests. And in this situation what Mr. Watt thought he was having -- getting was an equitable interest in the land to secure a note. If you look at those documents, those deeds, that go back and forth, we're talking about \$150,000 loan, but these -- the consideration that's marked on each one of those deeds is \$1, when it went back and forth. It was \$1. And the reason that it was done that way was because of the belief that this was a security document, a security interest, not an ownership interest for the purposes of measure 37.

Adams: So if I could, the distinction between -- give to for me again your legal distinction between a security interest versus an ownership interest.

Cox: A security interest merely secures and does not pass the -- the -- both -- there's two types -- there's two things in law. There's an equitable interest and a legal interest. I mean, maybe it's done by lawyers to explain the difference. Equitable interest is that which is being held by a lender.

November 30, 2005

Legal interest is that which if you were a contract purchaser, for instance, you would have the title to the land, but until the contract is paid off the actual owner of the land, the seller, would have an equitable interest, and that is an interest in land. It's done with mortgages. It's just a different name.

Adams: Whose name appeared on the deed?

Cox: Mr. Watt's did for a period of two or three years.

Adams: How is it that you argue if his name was on the deed that it was owned by the other gentleman?

Cox: Because of the testimony of both gentlemen who say that was their intent. And whatever document is being used, no attorney was involved in this transaction. And the answer is, I think, it has to go back to the question of --

Adams: Pardon the interruption. But was there any third-party verification of their motivation or interest?

Cox: I can ask mr. Patton to explain that.

Adams: I mean is there a notary? Were these things notarized?

Cox: No.

Patton: Yes. The deed was, was notarized and recorded. That's the problem, was --

Adams: Was anyone there to witness the -- is there any documentation or any witness that could verify your intent? I mean, we weren't there, so it would be helpful if there's some sort of verification. We have lots of people that come before us and say a lot of different things, so we don't know you, so we're not able to take your word for it necessarily, because we don't know you. So is there anyone that -- any third-party verification to your claims that the ownership interest didn't change?

Patton: There's a possibility that there was an attorney that may have -- may have a notary public at the time that could. I hadn't thought that it was critical. The thing that I know for a fact is that this kind of a situation has come up many times before, and an equitable interest, or an equitable mortgage, in whatever form that you put it down, is -- is what it is. And in this case it was security, but it was in fact an equitable mortgage. So that even though he had a deed, it was the same thing as if it were a mortgage. It was an equitable mortgage. And I think there's case law that will prove that.

Potter: If you wanted to borrow money, why didn't -- why didn't you keep the deed, but write up some kind of instrument to the other gentleman that would allow you to access the funds without giving up your deed?

Patton: I was -- I guess abundance of caution. I didn't know what's going to happen to me necessarily. I want to protect my friend if something did happen to me and not have some hiatus where he has to go through hell and high water to get his money back. And so this -- this seemed to me to be the -- the simple way. And when the tax statements came, because we did record it -- I recorded it, took it in to have it recorded. Well, it wasn't that he necessarily asked me to do that. I mean, it was more my offering to try to keep him in a secure position so that he didn't lose money because of me.

Potter: So if something had happened to you, what would have been the result?

Patton: I would assume that he could have then had -- foreclosed or taken the property for -- as his collateral for his security.

Potter: Foreclose. He's got the deed.

Patton: Yeah. So he didn't have to go through that process.

Leonard: Because he owns it.

Patton: He wouldn't have had to go through all of those steps to prove an ownership.

Potter: Because as a matter of record he was the legal --

Patton: As a matter of record with the county he had a deed to secure himself.

November 30, 2005

Watt: May I speak?

Potter: Yes, sir.

Watt: As a matter of fact, as I said earlier, we're old friends from high school days. He was in trouble, needed some money to pay this thing, and I went with him. I'm living in bend, as I said. I didn't want to have some property over here. I wasn't interested. Still am not. I live over here now, but I wasn't interested in being involved in that. And it wasn't ever intended for me to buy that property, if that's what you're asking.

Leonard: You know, if there was derelict -- a derelict structure on the property, and the city took some action, you know who they would have gone after? You, because you were the owner.

Watt: I realized my risk that I was taking.

Leonard: But, I mean, I think what you're saying probably is, as it was, that your intent was that, but I think if you'd have had a lawyer for you, he'd have suggested you do it a different way just because of what has now arisen. I suspect that's why the staff didn't take the deposition, because it didn't matter. I mean, it's kind of irrelevant, because it is what it is. I mean, the deed showed you were the owner. Doesn't matter what anybody says they thought happened. It is what it is.

Cox: I might point out again that measure 37 says any interest therein. It doesn't necessarily have to appear on the deed. All you have to prove is an interest therein. And I think that is clearly what we're doing here.

Adams: Again, i'll ask you, is there any third-party verification of the interest note, the --

Cox: I think mr. Patton answered that. I wasn't around.

Adams: Right. But there's no third-party documentation of the interest therein?

Cox: No. Just two people giving you their word that that's what happened.

Adams: Right.

Watt: My kids didn't even know it. It was a quiet deal. I didn't want everybody to know that lowell needed the money and that I lent it to him.

Cox: I think you'll see that in the deeds that are in your record, exhibit a, shows how this all came about. It references the loan from the united states national bank with mr. Watt's cosigning, and then it takes you through the process, shows you that there was a \$1 transfer consideration, which by today's standards I don't think is consideration anyway. I think even -- I think you have to have at least \$10. Used to be \$1. We don't have anything else to say. We think that that is -- our position is that 4300 is part of this property, that mr. Patton has a right to develop eight lots on it, and has a right to go forward. The only option he has, I suppose, is to show a taking of this property, because the documents also show that over 80%, maybe 100% of it, is covered by p zones, which renders it unusable.

Patton: However, if the -- as the gentleman earlier said, that there is no height restriction, and when I first acquired this property, of course, we could do most anything with it. Lewis and clark college, because it's close up there, they wanted me to put an apartment house on it for married students. I wasn't in a position -- I was running a business at that time. I was saving this property more for something to develop and do after I was retired. But the -- if the city is saying that I can put a 10-story building on there, that i'm in the zone where I can do that, and the zoning doesn't -- will allow me to have so many units, and I have to put it in the little box, may not be the most attractive way to develop that property, but maybe that's a route to go and we don't even have to fight the measure 37 issue. I think that's what I heard them say, that we can do a lot of things with this property. So if we can do all of those things, let us go ahead and do it.

Saltzman: Well, I believe that analysis applied to tax lot 100 -- are we talking about 100?

Cox: We're talking about 4300. It's the largest of the two.

Saltzman: Yeah. I believe the analysis of what you could do applied to tax lot the 100.

Cox: Right. The only way you could be able to do what mr. Patton is talking about is transfer the density off 4300 on to that property. Whether or not that would be allowed, it's unknown, but I

November 30, 2005

would think that it won't be. Otherwise you could have a 14-unit apartment, I suppose, because that's how many -- that's the zoning, would allow square footage-wise 14 lots on this two pieces of property. Is there any other questions that we could answer for you? Just want to reiterate that there is -- it doesn't have to appear on the deed to be an interest in land. You have two gentlemen who are upstanding citizens, who are sitting here saying to you what their intention was, and I believe that it's incumbent on you to give that strong weight. Thank you.

Potter: Is there anyone signed up to testify?

Moore: Seven people signed up.

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

John Miller: I'll go first. John miller. I live on boones ferry road, up hill just a bit, a few lots up hill on the other side of the road from this property. I purchased my home in 1978. Worked at the college for 25 years. I submitted a letter. I don't see it in the staff report, but I did submit a letter to the state on august 6, measure 37 claims unit. I'll try to summarize that for you to help you make your decision today. We looked at this property that we, the neighborhood association, looked at it back years ago when the southwest comprehensive plan was being done, and we knew that lowell wanted to build something there. We heard that anyway. Our chair at the time spoke with him. And I believe dave, our land use chair, may speak to that part of it. I've been down on this property, on the ground. Right now it's inaccessible from blackberries, but if you go down in there there is a fair amount of buildable land in my opinion down there. It's a nice space. There's some flat areas, but does have steep slopes off of boones ferry road. There's a stream on it, all that stuff. The point of view that we came to have was that you could put some living units down in there of some kind, but pulling them back from the stream. Not bull dose over the streams, not pave the place over. Do some kind of environmentally sensitive housing development down in there, clustered in. I like to think in terms of a -- you know, a greenhouse or a home for assisted living or some kind of a complex like that, that could pull together in a cluster rather than just something, you know -- this is the first time i've seen this plat here. Doesn't look like it would work, in my opinion, on that property. So in conclusion, I think that -- and I speak for several people around there -- that mr. Patton could develop the property in a sensitive way. We don't really think that he is entitled to a million dollars of losses, but if you guys have a deep pockets that you want to -- you want to pay this out, then I think the property should belong to the city or in exchange for that money or you could donate it to metro open spaces or -- it's right adjacent to some metro property there, open-space property.

Potter: Thank you.

Dave Johnston: Good afternoon. I'm dave johnston, the coland use chair for the collinsview neighborhood association. I live on southwest palatine hill road in Portland. This property in question is within the boundaries of our neighborhood association, and my interest and my fellow cochair, my wife's interests in being here are first as land use chairs for the neighborhood association and our interest in the livability of our association's area, as well as the city as a whole, and also as a city of the city of Portland to ensure that the city council has as much accurate information as possible regarding this, and that, yes, we don't pay out claims except as may be appropriate. Along those lines, i'm familiar with the property in question. Some of the things the report doesn't show are the lack of road accessibility. The first street to the south, primrose, I believe, is shown as intersecting boones ferry road and connecting it to terwilliger, however the portion of that street going through to boones ferry road is simply an unimproved right-of-way --
*****: Lobelia.

D. Johnston: Ok. Primrose is the next street further south that does go through. The first street, lobelia, does not go through. And so that limits your access to the property. There are no sidewalks there. There are narrow shoulders, limited streetlights, poor walking area. All of that affects not

November 30, 2005

only the developability of the property, but also the value of it if we get into the question of what should the city pay if the claim is paid instead of waived. The street, boones ferry road, does not have a left turn off of taylor's ferry, which severely limits vehicle traffic into that site from Portland.

So you have these limitations on it. The staff has done an excellent job in analyzing the site. The topographical map there shows the area. In this part of town, and you may not be aware, the soils tend to be unstable, clay soils, they soak up, they're subject to landslides. All of this involves safety issues. All of this involves the value of the land. \$100,000 plus per lot is more than the real market value on a much larger, better lot that I own and live on on palatine hill road near lewis and clark college. It's just simply too much. You ought to have title to the land for that much. So I'd urge you not to pay that much on the claim and to look carefully at it. There was much talk about an interest not shown by the deed in the land. I'm also a lawyer. Early on in the development of our laws, there was a principle called the statute of frauds that says certain interests must be in writing, including interests in land. The city attorney could give you a better idea of the status of that here in Oregon. So I see my time is nearly gone. And I'd urge you to consider that, too, before you accept an unwritten interest in land as valid.

Dixie Johnston: Hello. I'm dixie johnston. I'm the other half of the team here. I wanted to say that I thought chris dearth did a superb job. That whole staff did a superb job in their report. It was very comprehensive and I was quite impressed. I also want to urge you to read john miller's letter and also the letter from Sonya casin. Both john and sonya have been chairs of the neighborhood association before dave and I were. And they know the area very, very well. We've always considered john to be our transportation expert. Sonya works for odot, and she also was chair of the tryon creek watershed council for a while. And she knows the soils very well. And her letter goes into a great deal of detail on mr. Patton's property. The packet that you have there, most of it is pretty self-evident. The first page is the city ordinance that you all passed may 19 of this year. The second section of that is a copy of the southwest hills resource protection plan, and the specific areas for lowell patton's property. This is site number 117. Inside that I have marked again the specificity of the soils, the slides, the slumps, the erosions, the creeks, including stevens creek, and all of this could be covered perhaps under the endangered species act. So when we looked at measure 37, it's not merely to look at the exemptions for safety and health, but also to take a look at the federal laws. And we're not sure what the status is right now from the endangered species act and how it would be impacted here in the southwest hills, but I do think that should be another factor to be considered. The next section of the packet I gave you is dr. Charles alt's report. Very poetic, but it has to do with the southwest hills, and I marked in that report in my yellow marker, especially information on missoula floods, what it's done to the soils of that area. I want to let you know, when dave and I were working on the southwest community plan, we listened to lectures from both Oregon state university and Portland state university geology professors who reiterated very much what was in dr. Alt's report, and I thought you should have something in writing so you would understand the situation with the soils on mr. Patton's property. Please understand, we are not saying he cannot build there. We just want it to be done carefully. We've seen instances of landslides where houses have been crushed within our neighborhood. And to finish up, the last part of your packet that I handed out to you is the bureau of planning's map. It shows how they wanted to extend the environmental zones. As we were going through the southwest community plan. It did not get passed, but it does show city staff being very concerned about this property. I marked it in yellow on that last page of the packet I gave to you. Across the street from mr. Patton's property is beth israel cemetery. It also is up on a high hill. So you have a steep slope on both sides of mr. Patton's property. So I feel like that this is something that should impact what your decision should be. Thank you so much.

*****: I'll just sit right here and say that I support --

Potter: Excuse me. Please state your name your name for the record. You have three minutes.

November 30, 2005

Veronica Bernier: Yeah. Veronica Bernier. Community Health Education Senior portland state university. I have an interest in this issue because of my interest in environmental health sciences and also horticulture. I just wanted to say that I support what they just said. I think it's really important at this time that we support land issues generally. Kind of universally speaking, the areas they described are fraught with problems. I understand a little bit about the area having been to it, but I haven't really lived in it. I just have to tell you that from an old 1960's type of ex-hippie type of person, I always have supported the -- you know, the green thing. I think commissioner Saltzman has general support for the green thing, and I know erik Sten does. And I know this possibly will have good support.

Leonard: Keep going.

Bernier: Anyway, i'm not running for election --

Saltzman: I'm an old hippie, too.

Adams: You're an old hippie, dan? Bring in pictures.

Bernier: So anyway, just without underlining all that, I just want to mention that soil erosion has been a constant problem. We've had massive erosion problems all over the city of Portland. That's an area that needs looking into. Generally speaking, we got problems with the tributaries and riverlets coming off down the hill and the land just kind of sliding. It points for the need too the usgs survey team to come in, the united states geological survey team, looking at problems like soil slippage and things like that. So I support the idea generally, and I just want to say stick to it and give them your best shot. Thank you.

Potter: Is that it?

Moore: That's all who signed up.

Potter: I had a question for the city attorney. On the appendix there's the sales agreement between mr. Patton and mr. Watt. Do you have that? And it's dated from 1988? Is that correct folks? Is that when you - -

Kathryn Beaumont, Office of the City Attorney: There's a mortgage dated from 1984. There's a bargain and sale deed dated 1988 and then a quit claim deed dated for 1992 --

Potter: This was when they transferred the property on that one, correct?

Beaumont: Right. The bargain and sale deed is the means by which they transferred the property.

Potter: I just wanted to ask you what the meaning was. It says that it's -- under the grantee's heirs, successors, assigns all that certain real property with the tenements, hereditaments and appurtenances therefore to belonging or in anyone anyway appertaining. What's the real world language? What does that mean?

Beaumont: That's old english common law language that I think a lawyer in -- in lawyer's zeal to say everything, not once, not twice, but three or four times, is really intended to mean that they're transferring all the real property and any rights -- any rights, anything on the property, or anything related to the property, it all goes.

Potter: Ok. Thank you. Do you disagree with that definition?

Cox: For the record, bill cox, 0244 southwest california street, Portland, 97219. I believe that kathryn is correct. If we can't say it in one word, we'll bore everybody by saying it in 10. But I do want to respond to one comment. First of all, I know it's nice to have the public come and testify in these things, but anything that doesn't go to the question of ownership and the question of waiver or payment is not really relevant. I think your attorney will support me on that. The one thing that was said by mr. Johnston was he alluded to a statute of frauds. Well, the statute of frauds is designed to protect a party to an agreement, not a third-party. And both the parties to this agreement come to you and tell you what their intention was. So I think that -- if you have any other questions, I think the whole idea of what the -- what the land will support, that is all something that can be dealt when the development takes place. What is waived, what is exempt

November 30, 2005

that is all something that needs to be dealt with at the time of development. The reason that we sent in the plat that we did was, as it was pointed out in my letter, my application, we knew that this problem existed, and we thought it unnecessary -- or actually a waste of not only the city's time, but our time, to submit something to have it rejected, because we knew it would be rejected with an. 80% of all this land is covered by protection zone, so it makes it very difficult to build anything on it.

Potter: Just wanted to ask you one thing. The other man, the attorney, also said that any property interest had to be in writing. Is that correct?

Cox: I don't believe that's correct. It doesn't have to be recorded. The recordation of something merely gives notice to the rest of the public. I don't -- you can put a memorandum of contract in, but you don't have to put the whole contract in.

Potter: So you're saying it doesn't have to be in writing?

Cox: Not necessarily. It's a matter of proof.

Potter: Let's get a third opinion on that. The city attorney.

Beaumont: I have to admit when Dave Johnston mentioned the statute of frauds, it struck fear in my heart, because I haven't thought about that since I took the bar exam. Generally property interests are in writing. Mr. Cox is correct that just because you pass a deed or other interest to property to someone else in writing, it doesn't have to be recorded. The purpose of recordation is to put others on notice of the interest in property. I would comment, for you, I think the real question that Mr. Cox has posed to you is whether Mr. Patton has had an interest in the property, either an ownership interest or an equitable mortgage interest continuously since 1973. The issue of whether there has been an equitable mortgage with respect to the property is really a fact question. There is case law that says -- the case law basically says that a deed that's absolute on its face, which purports to absolutely transfer title to property, is presumed to do what it says, unless the parties can show otherwise. If they can show that their intent in transferring the property was to secure an obligation, then that transaction can be construed as an equitable mortgage, regardless of the fact that a deed was given. The legal requirement is that that intent be shown by clear and convincing evidence. And the evidence -- that there be clear and convincing evidence of their intent, and that it be evidence that shows what their intent was at the time of the transaction. In reviewing the facts, I think the staff and I felt that on the one hand you had the deeds -- well, on the one hand there was Mr. Watt's affidavit, and you've heard the testimony today that is coming 15-plus years after the fact to describe what they thought they were doing at the time. On the other hand, you have the deeds which do purport to transfer title absolutely to the property. The mortgage had a maturity date of October 30, 1984. There is no other document that indicates whatever mortgage Mr. Patton gave Mr. Watt was extended. One of you asked a question about whether there was any sort of written document or other contemporaneous evidence from 1988 that would show that the intent was when Mr. Patton gave the deed to Mr. Watt the intent was that Mr. Watt would convey it back when Mr. Patton repaid him, if those were the circumstances. There is no contemporaneous document. We did look at the -- confer with Multnomah County on the tax records. They do show a change in ownership that follows the pattern of the deeds. And after reviewing the case law and a number of the factors that a court would consider in determining whether or not there is clear and convincing evidence of an equitable mortgage, our conclusion was there is not. You've heard the testimony. You have the documents in front of you. This is really a fact and evidentiary question for you. So you can weigh the facts. You may agree with staff. You might also disagree. If you disagree, then we would need to ask you to continue this proceeding so we could further analyze the claim.

Saltzman: If the fact that Mr. Patton paid the property taxes and there were evidence to that effect for these five or six years, does that constitute evidence of an equitable interest?

Beaumont: That is one of the factors a court will look to.

November 30, 2005

Saltzman: And was that all -- was that information sought or requested by either of our staff? Didn't get to that point? [inaudible]

Dearth: We did not seek that information. We found out that the tax records did show the transfer of interest during the time that mr. Watt held the interest there. But we did not seek evidence as to who paid the taxes. I don't know whether that's available or not.

Saltzman: I'd like to ask that of mr. Cox or mr. Patton. Do you have --

Patton: Don't have the receipts.

Saltzman: So you don't have any evidence that you paid the property taxes?

Patton: I think I can find it, but I don't have it now. I did try to get that evidence, and I tried to check with the bank, because i'm sure that the taxes were paid with a cashier's check from the bank, and the bank can't -- cannot find a copy of the cashier's check, and I haven't researched through the county to -- to find it, but I know that the interest and the taxes, that I was responsible for that, and I paid it. And it was in one case, on this particular property, it went out several years so that it was close to foreclosure by the county, and I had to redeem it, but with a cashier's check. And I was searching for that, and I haven't been able to find it, but my recollection is that that is what happened, because I did find a notification a little bit later where the county had come back to me and -- and if the tax statements that I have, even when they sent them to -- to harvey watt, and he sent them then directly to me to take care of, I do have some evidence of that. But I couldn't find the -- the checks, and in particular, because there were cashier's checks, which I don't get back anyway. The bank should have them, but without a number of the cashier's check, or something to identify it, they can't do it just by my name with a check to Multnomah county.

Cox: If I might, just follow up on that, we have here a document. It's the 1991 taxes. And lowell has them, where he received them, and he also had with it a letter -- I mean an envelope dated the 28th of january, 1991, from mr. Watt, from bend, Oregon, which -- which sent the envelope -- this was contained in the envelope, is what i'm trying to say. And that's as close as we could get. We did not have a great deal of time after we got the staff report to do some of that research, because of the holiday, but I think mr. Patton's testimony here is -- is evidence itself. I don't know if we can find anything more. Lowell?

Patton: I think we can. I think I can probably. I don't have much as far as office help is concerned anymore, and certainly the girls that were there previously are no longer here. Consequently it's pretty difficult for me to find a copy of a cashier's check that's 15 or 20 years old. I think somehow or another we'll be able to come up with it if that becomes really critical.

Saltzman: I can only speak for myself, and I would say that if it was a question of giving you more time and you were able to produce some evidence of payment of property taxes in that period, I would be inclined to find that you did have an equitable interest in this property. But i'm only speaking for myself. It may not matter to the other members of this body.

Patton: I think I can find copies of checks to the u.s. bank paying interest.

Leonard: Interest on what?

Patton: Huh?

Leonard: Interest on what?

Patton: To the u.s. bank during a period before the note matured.

Leonard: Paying interest on the note?

Patton: On the note.

Leonard: That's not the question. [inaudible]

Patton: We borrowed the money from the u.s. bank, and harvey watt cosigned, and when it came time to pay the -- the principal, and it was called, he had to pay it because I was unable to do it at the time. Consequently he ended up with \$150,000 owing to him, because he paid that money to the u.s. bank. So later on I was able to -- to pay that back. But it took some time. And I couldn't pay the bank at the time. That's why we got into this hiatus.

November 30, 2005

Potter: So how did you claim on your tax form, paying taxes on somebody else's property, or did you?

Patton: I'd have to take that to the c.p.a. and find it, but it was deferred there for quite a little period of time until it all was going to go to foreclosure. So during the period of time when the property was in harvey watt's name, I don't think there was any taxes paid. He sent -- he sent those -- those tax statements to me to pay, but they hadn't gone to foreclosure yet, and so they weren't -- they weren't paid until sometime later. But like I say, i'll be able -- I think i'll be able to find that to satisfy mr. Saltzman, that -- if the payment of taxes is going to be a critical issue to prove that this was nothing more than an equitable mortgage. But I would think that the testimony should prove it anyway, that it was an equitable mortgage.

Sten: I'm prepared to make a motion, mayor.

Cox: Just for the record, this idea of foreclosure, not paying taxes, is quite common where people put off and use three years, and then pay the third year off, so they basically are carrying a loan from the Multnomah county, especially in the past when there wasn't such a differentiation in interest and inflation. But that's not an uncommon practice. I think most of you have heard of it.

Potter: Thanks, folks. Commissioner Sten?

Sten: Yeah, i'm prepared to make a motion if you're prepared to cut off discussion.

Potter: We're done.

Sten: Ok. I would move to uphold the staff's recommendation and deny the claim. While I am sympathetic to the gentleman's situation, I think that -- I find the facts not to be there, that -- and also I think that if -- you know, it's in the public's interest to have the environmental zones and other laws upheld, and you get an exception to that if you meet the criteria of measure 37. I don't find any reason that this council should bend over backwards to try to find a way to approve this claim, which frankly the ownership changed, and therefore I don't believe it's a valid claim. So I would move to uphold the staff.

Leonard: Second.

Potter: Call the roll.

Leonard: Aye.

Adams: Well, I think that you offer very sincere testimony, and I weighed that against the documents and the evidence presented to us, the fact that you have a deed and a tax statements that don't back up the verbal claims, I weighed those against each other. In the end I did not feel that you presented clear, convincing evidence that you had an equitable mortgage, and so I vote aye for the motion.

Saltzman: Well, I certainly believe the sincerity of the two gentlemen. I believe if had more time, there might be evidence that you paid the property taxes, and therefore had an equitable interest. And I also believe as john miller from the neighborhood said there's a way to do an appropriate type of development where we can waive not the substantive of health and safety aspect of the environmental zones. Let's treat that lot as we just treated -- or we probably will treat tax lot 100. In other words, maintain some water quality, stability, erosion control regulations, but allow you to have more flexibility on lighting and setbacks. So I do think there's something that could be done there. But despite all that, I am going to vote to uphold this motion. Aye.

Sten: Again, I don't doubt your sincerity. I believe what you're saying in terms of what you set up to do, but you have to document it. And particularly in the case when you want to have happen is not in the interest of the greater citizens. So I would be -- it's in the client's interests, but not the neighborhood's. I would be open to seeing a proposal that worked with the neighborhood to give some variances or other things to make it developable if something like that came around and we knew what was being proposed, but I certainly don't see a valid measure 37 claim. Aye.

Potter: I concur with commissioner Sten. Aye. [gavel pounded] please read the next.

Item 1498.

Potter: Folks, could you go outside, folks, please? [change of captioners]

* * * Compensation demanded is \$980,000. Of which \$200,000 is for environmental zones regulations and \$780,000 is for a comprehensive plan designation change. Preferred resolution was not stated in the application. This -- to put this in context for you, it's in the arnold neat creek neighborhood in southwest Portland. The regulations challenged are two. The environmental zone and a comprehensive plan change from r-10 to r-20. Give you history on this property, on June 3, 1982, the city placed a 25-foot protective buffer around oak creek, which runs on the southeast corner of Mr. Grudzinski's property, actually at this time he did not own the property, but the property that he was to purchase in July of 1988. So when he did purchase it, it did have this protective zone on it. The property is approximately a little over 33,000 square feet, so when he purchased it, it was zoned r-20, meaning he could have one dwelling per every 20,000 square feet, and he was allowed at that time one dwelling, which he does have on it at the time. In January of 1992, the council adopted the southwest hills resource protective plan, as we went through before. This plan laid a conservation zone, an environmental conservation zone surrounding the creek on the southwest portion of the property, southeast, I'm sorry, portion of the property. The conservation zone allows for a 25-foot buffer transition zone, allowing disturbance on the edge of the environmental conservation zone, so in the graphic here you can see the environmental conservation zone in the light crosshatching, the orange area is the area where there cannot be a disturbance without additional permitting, and the blue again is the creek protection that's were in place when he purchased the property. To give you a little broader context of the neighborhood here, Mr. Grudzinski's property is on the lower left-hand side of this graphic. The light green, you can barely see, is the conservation zone which flows across his property, and throughout this network of streams. The darker green is the environmental protection zone, which is not on his property, but which carries a higher level of protection for this network of streams. Again, the measure 37 carries several exemptions, one being for public health and safety, the environmental overlay zones, similarly, same findings as before relating to the previous claim. Council findings outlining protections for health and safety reasons. Same emergency declaration there. Same environmental -- we come to the same conclusion with the environmental regulations which were clearly designed to protect public health and safety. And the same conclusions for those which were not designed to protect public health and safety, and those then are subject to measure 37. We go on to look at the restriction of use, and once again I would point out that the areas subject to environmental regulations beyond what was there on the property when he purchased it is very slight. It's the bright yellow zone there. The net change is approximately five feet along the stream protection zone there. And the number of lots, the density of the property is not affected by that additional protective area. So therefore we conclude that the environmental standards subject to measure 37 do not restrict the use of the property. As far as reduction in value, the claimant has claimed \$200,000 in reduced value due to the e-zone regulations. But we find no evidence that these regulations, that regulations which are subject to measure 37 limit the number of units or reduce the value of the property. In conclusion, those environmental regulations subject to measure 37 do not restrict the use of the claimant's property, nor do they reduce its value, and our recommendation would be to deny this portion of the claim for the environmental overlay zone regulations. So we move on to the second claim, which has to do with the comprehensive plan designation. This zoning map shows the zoning which was in place when he purchased the property in 1988. You can see there that the zoning in the large letters and numbers is r-20. The comprehensive plan designation listed in parentheses there is r10, and the comprehensive plan

November 30, 2005

designation simply indicates the zoning potential for the area when the infrastructure is developed to the place where the -- it can support that density. And you can see some of the properties around mr. Grudzinski's property had even at this time when he purchased the property rezoned to r10 in conformance with the comprehensive plan designation. In 2001 the southwest community plan was adopted by the council, and as part of that plan, the comprehensive plan designation was changed because of concerns about environmental protection to conform the comprehensive plan to the existing zoning where it was still r20. So the comprehensive plan designation was r10. The zoning had not changed on mr. Grudzinski's property since he had purchased it, but the comprehensive plan designation was changed to match the zoning to r20. So the zoning was not changed, the comp plan designation was changed. In conclusion, because we find as a consequence of the change in the comprehensive plan designation the potential, and I emphasize potential number of lots on the property was reduced from three to one, and he would have of course had to go through with a zoning change to achieve that potential three lots on his property. Therefore the claimant did we think suffer a restriction in the use of his property and the reduction in value of his property of at least one dollar. But we did not estimate the actual loss in value. Our recommendation would therefore be we recommend to not apply the existing comprehensive plan designation of r20 to the claimant's property. And I would note again that the claimant will still be required to go through a zoning map amendment process and comply with all other regulations, even if his comp plan designation is changed. To summarize, for the environmental zone claim, we recommend that you deny this claim because of the environmental regulations subject to measure 37 do not restrict its use or reduce the value of the property. And secondly, we recommend with regard to the comprehensive plan designation claim that you not apply the existing comp plan designation of r20 to the claimant's property. We would not apply the r20 and would revert back to the r10 that it was before the change.

Leonard: Do you ask questions, i'm sure you do, but just so I understand, when you make a determination such as the value of the property was reduced by decreasing the potential amount of structures from three to two, do you take into consideration the increased value or what I would assume to be the increased value if two houses on the property versus three, allowing more space per property I would think would make that house more valuable.

Dearth: I'm not understanding your question.

Leonard: I'm just saying you have a fixed amount of land there, and if you have two houses on it versus three, doesn't that make the property more --

Dearth: That's our estimation. If there if potential to develop more lots on the property, there is an additional value in the property. When that potential was reduced by changing the comprehensive plan designation, we estimated it was reduced. We didn't estimate how much.

Leonard: I would think that in a city that values density as much as Portland does, any time you can get a house that has more property around it than would you in the inner city, that would make that house more valuable. But that's just -- that's just what I would think. I don't know if that's actually --

Dearth: I'm not really an expert, and we didn't get into that. -- we just took the common sense if it did have the potential to develop more lots on it, that it would potentially be more valuable.

Leonard: Let me finish this, the reason I ask, I know the staff, whether it was you or whoever, somebody actually made that point on the development out in outerrese Portland on 162nd avenue, one of the issues there was an environmental zone, and the staff said that increased the value of the existing houses because you had open space.

Dearth: Right. Some people like to live near environmental zones, and would estimate that that increases the value. In this case it very well might have that effect, because there are environmental zones in this area.

November 30, 2005

Radelet: Can I add one thing? I want to clarify it's three lots to one. He would only be allowed to maintain his one lot. And under the proposed granting or allowing the zone change to occur under r10, all the environmental requirements that still maintain areas in natural state would still continue to apply. That part of the claim we're not proposing to grant, the environmental regulations. So they would still need to have a tract of land that contains the stream, which would provide those amenities similar to the 162nd. That was more -- the amenity of the tract in the open space versus the number of units.

Potter: Did I hear you say this was the second measure 37 claim?

Dearth: The second one today.

Potter: Oh, ok. Good.

Dearth: That's what I meant to say.

Potter: Any other questions? Thank you. could the claimant please come up to the table?

Dean Grudzinski: My name is dean grudzinski.

Potter: You have 15 minutes, sir.

Grudzinski: I don't have anything to say.

Potter: Ok.

*******:** I'll answer questions.

Adams: I have a question. Why did you want to contest the relatively small environmental zone impact on your property? In terms of feet, is there something on the property itself that we can't see on paper that made you want to do that?

Grudzinski: There's plenty. Well, there's more to do with the way it's being explained. Now, they're saying there's a five-foot difference in that. What it is, there's actually 100 feet. That means 100 feet of my property i'm not going to be able to build on. And it's not --er in kind of cherry picking the facts. Not the facts, but the information.

Adams: I see. Thank you.

Potter: You have 14 minutes left, are you sure you don't want to say anything? Ok.

Grudzinski: It's pretty cut and dry. It has been for years.

Potter: Thank you.

Leonard: Are you agreeing with the staff recommendation?

Grudzinski: For now.

Leonard: That was clear.

Potter: Ok. Thank you, sir. Is there anyone who wishes to testify on this matter?

Moore: Veronica? I think she left.

Potter: Ok. Is there anybody who wants to make a motion?

Adams: Could I ask one clarifying question? Does -- is there any precedent in the city for development to occur even though -- that we approve development with the existing not yet implemented zoning designation?

Dearth: I'd have to rely on sarah for that, I don't know.

Radelet: Are you inquiring about the r10 comp designation? What that would be is similar, sort of similar to another claim that the council granted, the calcano claim where you granted the ability of the existing property owner to develop the property at a certain -- under a certain zoning without actually changing the zoning. In this case the current property owner, if the claim -- that portion of the claim were to be granted, the existing property owner, the claimant, would need to go through the zone change process himself, it's not something that would be able to transferred to another person. Once that zone change process was completed, then those rights could be transferred because it would be permanent. But he would -- he himself would have to go through that process.

Adams: If I recall, I voted against that one.

November 30, 2005

Dearth: You did. I would emphasize the difference between that one and this, that had to do with zoning, this has to do with the comprehensive plan. And I want to emphasize again that the zoning has not changed on this property. At all.

Adams: Zoning hasn't changed. So if someone was to buy a piece of property today, assuming there isn't any unclarity about the efficacy of 37, that is in a similar state, where it's r10, r20, could they then tomorrow come in and make a claim similar to this and just explain to me why?

Dearth: They could not, because they would be purchasing it with that change already having been made on the property. It's only --

Adams: If they're effectuated --

Dearth: If that change were made after they purchased the property, I guess they would have a claim similar to what mr. Grudzinski has here.

Adams: Say that one more time.

Dearth: If the comp plan designation was changed after they purchased the property, then they might have a claim.

Adams: Just so i'm clear --

Dearth: It has to be after they purchased the property.

Adams: So people could not -- someone could not go out and purchase a piece of property that has one designation actually on the ground, so to speak, but another comp plan which is the future desired designation, they could not come in tomorrow having purchased it today and say, I want to keep it what it is that I had effective on the ground today, the comp plan would rule?

Dearth: Well, they could potentially have a claim if that comp plan designation were changed after they purchased the property. But if it were not changed, then it --

Adams: It's a question of, is effectuation, whatever the right word is I just want to know if we set any precedence by dealing with this in any particular way.

Kathryn Beaumont: No. I don't think you do. I think the difference is if somebody bought mr. Grudzinski's property today, it would have the r10 zoning -- r20 zoning in the r10 comp plan designation. That -- those would be the regulations in place at the time they purchased it. In would be no basis for a measure 37 claim. If they bought it with those regulations but the city came through two years from now and decided they wanted to make it, I don't know, a farm and forest zone, designated as a farm and forest zone, and did so, then the owner would have a claim based on a loss of future potential.

Adams: But just -- their land is actually zoned r10 today, it's not -- r20, it's not zoned r10.

Beaumont: Correct. All that granting that part of the claim would give him back is the potential he had at the time the southwest community plan was adopted.

Adams: So it's a potential without a reality.

Beaumont: Right. He has to take additional steps to effectuate that reality.

Adams: Thanks.

Potter: Other questions? Do I hear a motion?

Leonard: Move to accept the staff report.

Potter: Second. Is there a second?

Sten: I would second it. The applicant had his hand up. It's out of order, but --

Potter: I'm sorry.

Grudzinski: I might want to say some more. We bought the property and when we moved into it, we had a total of six neighbors. Today we have a total of 18 neighbors next to our property. The zoning at the time we purchased it was r20 with an r10 comprehensive plan. The city did extensive development to the area, including putting in sewer and water to accommodate growth in the area. And in 2001 the comp -- the r10 comp was taken off the property without notification, and I had planned on developing the property. The west side -- the southwest hills are probably the only area in the state where the zoning had actually gone backwards to the larger lots. Going against all

November 30, 2005

metro's plans, the city of Portland's plans, I want to read to you something from the Portland compliance report put out by the city of Portland. No comprehensive plan provision implementing ordinance or local process such as a site or design review may be applied and no condition of approval may be imposed that would have the effect of reducing the minimum density standard. And that's what happened in 2001. The density standard was reduced. It was doubled in size. There is extensive development going on all around me, everything is r10, r5, and r2.5. I've got four condominiums that are going in as we speak across from my driveway. I've got 18 neighbors. And as far as the lot size, the bigger the lot size, it doesn't increase the value. Those properties are usually broken up and developed because it's called best use, larger lots are broken and divided and built on for homes for families.

Potter: Thank you, sir.

Grudzinski: Thank you.

Potter: I think we have a motion to hear a second.

Sten: Second.

Potter: Please call the roll.

Adams: Aye.

Leonard: Very good. Aye.

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

Potter: Aye. [gavel pounded] that's the last item on the agenda. We're adjourned until 2:00 p.m. tomorrow.

At 3:47 p.m., Council recessed.

December 1, 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.

DECEMBER 1, 2005 2:00 PM

Potter: Please read the item, Karla.

Potter: Will the city attorney please describe the hearing process.

Kathryn Beaumont: Yes. Good afternoon. At the outset of the hearing i'm required by state law and city code to read several announcements concerning the kind of hearing we're having today, the order of testimony and some guidelines for presenting testimony. First is to the kind of hearing. This is an on the record hearing. This means you must limit your testimony to material and issues in the record. During this hearing you may only talk about the issues, testimony, exhibits, and other evidence that were presented at the earlier hearing before the hearings officer. You can't bring up anything new. It's only decide if the hearings officer made the correct decision based on the evidence presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded you must limit your testimony to the record. Second, order of testimony. We'll begin with a staff report by kimberly parsons of the bureau of development services staff for approximately 10 minutes. Following the staff report the city council will hear from interested persons in the following order -- the appellant will go first and will have 10 minutes to present the appellant's case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the city council. Next, the principal opponent in this case the applicant, will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, the council will hear from persons who support the application and oppose the appeal. Again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the opponents of the appeal. The council may -- council may then close the hearing, deliberate and take a vote on the appeal. If the vote is tentative, the council will set a future date for a final vote. If they take a final vote today that will conclude the matter before the council. As a note for the council, the 120-daytime limit for making a decision expires on december 15, so our time is relatively short for decision-making today. Finally in terms of some guidelines for testimony, again, this is an on the record hearing, which means you limit your remarks to arguments based on the record compiled by the hearings officer. You may refer to evidence that was previously submitted to the hearings officer. You may not submit new evidence today that was not submitted. Previously. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the city council's final decision. If you believe a person who addressed the city council today improperly presented new evidence or presented a legal argument that relies on evidence that is not in the record, you may object to it on that -- you may object to that argument. Only issues raised before the hearings officer may be raised in this appeal to city council. If you believe another persone has raised issues today not raised before the hearings officer, you may object to the council's consideration of that issue. And that concludes my opening statements.

Potter: Thank you. Do any members of the council wish to declare a conflict of interest? No council members have a conflict of interest to declare. Do any members of council have any ex parte contacts to declare or information gathered outside the hearing to disclose? No city council members have ex parte contacts to declare. Do any members of council have questions or

December 1, 2005

preliminary matters to discuss before the hearing? Ok, staff, please proceed. You have 10 minutes.

Kimberly Parsons: City planner with bureau of development services. This is a presentation for appeal of the hearings officer decision for 05-128857. This is for the city council to consider an appeal of the hearings officer's decision to approve the conditions of a four-lot subdivision, common green street and environmental resource tract. The appellant is the hayhurst neighborhood association and the applicants are michael and rita wallace.

Potter: Is there something we can do about the sound? [feedback]

Potter: Please restart the 10 minutes.

Parsons: The applicant are michael and rita wallace. A brief summary of the proposal, it's a request for four lots, a common green street and environmental resource tract. An environmental review for disturbance in the conservation zone, and an environmental modification for paved vehicle area on lot three resulting from a temporary turnaround. The applicable approval criteria are for the land division environmental review and environmental modification. Just a brief summary of the decision. The hearings officer approved the proposal with a number of conditions. For an environmental resource tract, the public street improvements are required on southwest cullen, a common green street, tree preservation on the individual lots, mitigation planting in the resource tract, and on the lots. Replacing any mitigation plantings that are disturbed from a previous land use review that occurred at the site, and a monitoring period for the mitigation plantings. This is a zone map showing the site. The site zone r7. So that's a density of one unit for every 7,000 square feet of site area. The site is almost entirely covered with the environmental conservation overlay zone. This is the proposed development plan. It's showing the four lots, a green street, resource tract, and some of the public street improvements. Lot one has an existing house on it, that was previously approved through an environmental review. The tree plan shows the trees that are required to be preserved outlined in green, and the trees being removed with red. Also not shown here is the environmental resource tract, and all the trees within that tract are required to be preserved. And then this just outlines the mitigation planting areas. So there's removal of 37 trees, both in the southwest cullen right of way and including trees on the lots. As litigation, 79 trees and 105 shrubs were conditioned to be planted within the tract. There are also conditions for the easement area to be planted with shrubs and ground covers, and then there's an additional planting area behind that on lots two through four that are to be planted with trees and shrubs. This is a photo of the southwest cullen dead end, so street improvements will be extended from that location to provide access to lots two, three, and four. This is the lot one driveway, so it's existing driveway leading down to the house. That was built in the last few years. This driveway will also provide the fire department access to that house. And then this is the approximate location of the common green street. So the street is not intended to provide vehicle access, it's just for pedestrian access, and would be developed with a sidewalk. Then this is the approximate location of where southwest cullen will be extended, and then there's a temporary turnaround that will be located on lot three. And this is just a photo of the existing house on lot one. Lot one also contains a mitigation area from a 2003 environmental review, so that area will need to be maintained and any plants that are disturbed as a result of constructing utilities for the new homes would need to be reeplaced. So this is just a brief appeal summary. The hayhurst neighborhood association appealed on the following points. I'll go over those in detail. First the appellant states that the application did not include all the information, plans, and consideration of alternative designs. And did not consider development of fewer homes or smaller homes. The maximum density of this site with a street is six lots. However, without a street being proposed, you can actually have seven lots with the site area, which is allowed by the base zone. The applicant proposed and the hearings officer approved four lots, so that includes the existing home as well as three new additional homes. While the lots do exceed the maximum allowed disturbance area of the environmental zone, there's tree

December 1, 2005

preservation on the lots, and mitigation area that really limits the amount of disturbance that can occur on those lots. For the evaluation of alternatives, we need to consider the overall project purpose, which is to divide the land. So we'll evaluate the lots and the disturbance area, but typically house footprints are not required to be reviewed. We'll be looking at what's being disturbed on the individual lots. So the hearings officer determined the proposal had the least impacts compared to other alternatives. Second, the appellant stated that the hearings officer decision did not adequately assess the development's impact on resource and functional values. I listed the potential impacts to resources and functional values that the hearings officer decision included, so public safety, pollution control, storm water, and forest microclimate. The hearings officer added mitigation as well as tree preservation to reduce the disturbance on the lots. There's also 14,000-square-foot resource tract that mitigates for the impacts and helps retain some of the forest microclimate. Tree preservation provides public safety in the form of maintaining vegetation at the site, and providing additional slope stability. The tree preservation on the individual lots will also provide forest microclimate. The appellant also states that the decision did not adequately address the mitigation criteria for significant impacts and that there are problems with the scope and location of the mitigation planting into the established forest system. The ivy has grown throughout the site and its removal will assist in providing additional area for planting on the site. It will open up the tree canopy and allow for more light and water to reach the new plantings. Mitigation within the tract ends up being about one tree for every 178 square feet, or one tree every 13 feet on center, and then shrubs at about 11½ feet on center. So that's pretty consistent with what we require for mitigation plantings. Typically we'll have trees at 15 feet on center, and shrubs five to seven feet on center. So here the trees are a little more dense, but a little less dense with the shrubs. There's also a requirement for monitoring and maintenance of those plantings for a two-year period, and that includes replacing any dead plants. So as part of that monitoring period, if we find certain species have low survival rates we're allowed to assess that occurrence and then substitute that plant with maybe a different species that would do better on the site. So just to show you this, is lot four and a portion of the resource tract, so you can see some of the ivy going up the trunks into the canopy. That would need to be removed, provide a little more area for planting at the site. And again, another photo of that. You can see there's quite a bit of ivy throughout the property. The appellant also states that the hearings officer decision did not address how safety will be ensured given the slope and previous landslides. The applicant's land hazard study found that division of the site in the four parcels and development of houses should not increase the potential for slope hazard on the site or for adjacent properties. Engineers from the site development section of bureau development services reviewed that study and had no objections. And during the review period and during the comment period there were no studies provided by any engineer or geologist that disputed the applicant's land hazard study. The appellant also states that the hearings officer decision did not address the uses for approving development of the lots which exceed the maximum allowed disturbance area of 17% of the site. So this site is over 50,000 square feet, so 17% would give them about 8500 square feet. Lot one and the approved, the already approved house exceeds that amount already, so while we're looking at lots and a green street that have about 34,000 square feet of disturbance area, the mitigation on the new lots and the tree preservation actually reduce the amount so the disturbance area really isn't that -- isn't that high of an area. So this kind of demonstrates what i'm explaining here. The mitigation is outlined in pink, so that area will be planted with native trees and shrubs, and the green circles are the trees that will be preserved. On some of the lots it's pretty limited as to where they can place the home and where their disturbance areas would be. The appellant also states the decision did not address how the green street will allow vehicle access and create the minimum required 30 feet of street frontage. So without the common green on this site, lot one ends up being a flag lot, and in this situation flag lots are prohibited. So green street is needed to provide the street -- the street frontage. The driveway on

December 1, 2005

lot one provides the access for both private vehicles and for fire bureau, and then the southwest cullen improvements will provide access to lots two through four. So it's not intend for any automobile access, and as I mentioned, lot one already has its own fire bureau access, so with those conditions, a 15-foot-wide common green is required by standards for pedestrian access a. 20-foot-wide common green is only required if the fire department would need it for access, which in this case they don't. This shows the location of the common green. I want to mention too that there may have been some confusion throughout the review as to where the green street ended. Because of the way some of the lines had been drawn on the plan indicating where the easements are. So this is what staff or what the hearings officer decision requires for the green street in order to provide the frontage for lot one. So just a brief summary. The alternative locations, designs, and construction methods were evaluated by the hearings officer and impacts were addressed. The mitigation is appropriate for the site given the ivy removal that needs to occur. The land hazard study finds the proposal will not create a hazard and the common green street mites the standards and criteria. Council has alternatives to consider, either deny the appeal and uphold the hearings officer decision, deny the appeal and modify the hearings officer decision, or uphold the appeal, overturning the hearings officer decision. And as stated previously, the 120-day period will expire in two weeks from today. That concludes my presentation.

Potter: Any questions at this point?

Saltzman: Yes. I don't think I really understand what a green street is, or a common green street.

Parsons: A green street is usually provided in order to provide street frontage, but it doesn't function as a street. It functions more as like a greenway, or a pedestrianway. So the intent is that it can be provided when vehicle access isn't necessarily needed, but it can still be counted as your street frontage.

Saltzman: So the cullen boulevard would be extended into a turnaround, a cul-de-sac.

Parsons: Yes.

Saltzman: And that provides sufficient access to lot four?

Parsons: Yes. Because there's also --

Saltzman: How does lot four get access?

Parsons: There's an extension about 20 feet wide that goes beyond the turnaround a bit.

Saltzman: There is?

Parsons: And it end at the eastern lot four boundary.

Saltzman: Ok. It's a cul-de-sac but it does have an extension --

Adams: An appendix. What are the red on your slide? What are the red x's, again? Those are the trees that go away?

Parsons: Those are the trees to be removed.

Adams: And the lot that commissioner Saltzman was referencing that the access meets fire regulations, and --

Parsons: Fire bureau has reviewed this plan and they have no objections.

Potter: Did they see the picture? One of your early slides indicated the access and driveway from lot one. And it looked as if there was a telephone pole right in the middle of that portion of the driveway. Could you go back to one of the early slides? Do you know which one i'm talking about?

*****: M-hmm.

Parsons: There's a tree --

Potter: Is that wide enough for a fire truck?

Parsons: That's what fire bureau has indicated. They probably wouldn't need to drive down the entire length of the driveway, they just need to get to a point to where their truck can be within 150 feet of the exterior of the structure.

Potter: Must be those new slim fire trucks.

December 1, 2005

Adams: I hope they have good water pressure up there.

Potter: Ok. Any further questions, folks? Ok. Thank you very much. Could the appellant please come forward?

*******:** I have copies of what i'm going to present.

Potter: Could you give them to Karla, please? Thank you for being here. When you talk, would you please state your name for the record, and you have 12 minutes. I'm giving you two minutes more because the bureau of development services took two minutes extra.

*******:** Thank you, mayor Potter. Thank you to the commissioners and to the mayor for entertaining our appealing your busy schedule. I wanted to start by giving you a sense of the involvement in this appeal of people who may not be able to be here today. 21 neighbors had signed a petition about this. Five neighbors wrote letters --

Potter: Could you say your name?

Eric Mankowski: I'm sorry, excuse me. First time here. Eric mankowski. I live at 3555 southwest cullen. We had 21 neighbors who had signed a petition. I should note that petition was not related in any way to my efforts or others in the neighborhood, it was filed to my surprise independently. There were five additional neighbors who wrote letters against this proposal, and at the hearing neighbors came and testified at that hearing against the proposal. As it was offered. I want to start by --

Potter: Do you have that petition with you? At this time doesn't say what the purpose of the decision --

Mankowski: I do have a copy of that behind me here. Shall I get it?

Potter: What was the purpose of the petition?

Mankowski: It looks like one of the neighbors filed it saying this was -- that the proposal would endanger access. There's a part of cullen that is closed due to a prior landslide, so there's only one point of access, and they were concerned about that issue.

Potter: Thank you.

Mankowski: As I think you're familiar, the criteria for the zoning code here is that the development in a conservation overlay zone have the least significant detrimental impact, and furthermore, it states there should be reduction in the number of proposed or acquired units or lots that could be required if the alternative will have less impact on the identified resources and functional values. So basically to consider alternatives is an important aspect of this proposal. The hearings officer's decision stated on page 21 that the applicant must demonstrate alternatives where considered during the design process, and that no other alternatives would be less damaging to the site. Based on my review and our review of the record, the applicant has offered no analysis of alternatives. The alternatives that have been offered have been presented by the city bureau of development services staff, and were recorded in the hearings officer's decision. Those alternatives failed to consider other practical alternatives that I have suggested, that the neighborhood association supports. In the response to those alternatives there's a staff justification for the proposal, but not a detailed and analysis of alternatives. A couple of these alternatives, for example, the hearings officer recognizes that the rears of lots two through four are a wildlife corridor. They're currently coyote, other animals using that passageway through fanno creek watershed. As it's stated now, those are going to be covered in part by mitigation plantings, but certain areas of those lots will not be covered by mitigation plantings, specifically, and i'll talk about this later, the areas that are related to a prior land use approval that will be disturbed, the mitigation of that area will be disturbed, and secondly the greenway street. Noticing this is a wildlife corridor supports the idea of shortening these lots, and leaving the back is another resource tract that would do a much better job of mitigating in a long-term fashion, and what I mean there is to shorten the lot and bring those mitigation plantings into an undisturbable resource tract, similar to the one that's provided at the currently at the east end of the site. Another alternative is clustering.

December 1, 2005

For example, condominiums have been proposed up against cullen boulevard. Fairly obviously different approach, but there hasn't been an analysis of that possibility. So what i'm talking about here is the area that's shaded at the back of those lots, the additional planting area will be included in trees, but the area that's got lines running through it, that's a prior planting area that's going to be disturbed, and the greenway street, those trees are coming out as well and being replaced by a sidewalk that seems to be of little value to the development. Some other alternatives that I raised were fewer lots with -- and/or smaller footprint homes. The decision of the hearings officer states that this is unreasonable, quote unquote, without providing any rationale. There's no further logic as to why smaller homes or smaller footprint homes couldn't be allowed there. Smaller and fewer lots and homes are allowed within the base zone of the development there. These would have less impact on the functional values and resources there. One or two of the homes have been proposed to have a three-car garage. This is inconsistent with the surrounding neighborhood. The homes are not of that size and the -- one consequence is there's a lot more paving happening in that driveway that needs to be in the home and they're bigger as well. The greenwayside walk as far as I can see is put in specifically to allow for a violation, or a prohibition against flag lots. It's not performing any functional value on the site, it's allowing the applicant to avoid the prohibition against flag lots where there's more than two lots -- two homes on a given site. Another alternative that has been proposed is having smaller driveways with pervious paving material along the lines of a lot of the sustainable and green development that b.d.s. Has been supporting, and the hearings officer's decision and the staff have responded that it's not appropriate for this site without explanation as to why. Moving to the mitigation plan that the applicant offers, which must compensate for all significant and detrimental impacts on the resources and values, it's our belief that this plan will not offset the impact in its entirety. The vast majority of the mitigation plan is proposed to insert 79 trees and 105 shrubs and other grasses into an existing forest. You saw some photos of that earlier, and it is difficult for us to see how those plants will survive, how they will gain adequate light and water in an existing forest. The density of those trees and plantings has been referred to, and the plan does not really require any trees in two of the four areas that are being proposed, those areas again i've already spoken about that -- the hatched area of a prior land use and the greenway. Some better alternatives exist, which is to put more of the mitigation planting on the proposed lots, as I stated. As the hearings officer acknowledges these plants would be installed in undistinguished areas and have a greater chance of survival. That -- and the mitigation plantings will help maintain the wildlife corridor. So if you have that wildlife corridor maintained behind the houses without fences and with a protected area, it's going to do a better job than putting the mitigation plantings into an existing forest. And I don't have the slides that would -- with all the color to explain that, but basically what i'm talking about again is putting in those mitigation plantings not in that area to the far east where it says natural resource tract, that's already an existing forest, it's been there for 80-plus years since the time of the red electric railroad that passed in that area. The maximum disturbance area that's allowed in this kind of conservation area is 17%. Recent prior development in 2005, that is lot number one, was just completed in 2005. This lot alone exceeds the maximum, and that fact is being used to justify further building on the site. The quote from the hearings officer's decision was, since there's an existing house on lot one, it is not practicable to meet the maximum disturbance area development standard. In other words, it's already been exceeded, and so that's a rationale for not meeting the criteria. There have been sequential applications for land use reviews on this site. 99, 2003, and 2005. Each one of these has taken a little bit more and a little bit more of the land on the site, and so my -- our analysis is that the mitigation planting that's are offered are just continually being successfully taken by these repeated land use reviews. It went from two houses now to total of six. So it's a way around the criteria having 17% developed is breaking it up into a whole bunch of smaller sequential developments, circumventing their requirement there. No evidence was provided that this resource tract is undevelopable. The staff

December 1, 2005

states that that resource tract the end where all the mitigation plantings are going is undevelopable. I don't know why. What would prevent the applicant from developing more homes there in a few years along the same property? There's no insurance of that. It will be owned collectively by the four people in those lots, but that doesn't seem to prevent it in my mind from being developed at a further date after that agreement might be sold. Land use. Excuse me, land division. I -- we've talked about the green street. Lot one's only direct frontage on Cullen Boulevard is that 12-foot-wide pole driveway you were looking at earlier. The code requires a 30-foot-wide front line on lots in the R7 zone. The purpose of this is to ensure that development has on the lot enough room to be oriented toward the street --

Potter: You've got a minute and a half.

Mankowski: Thank you. And that lots don't be built too narrowly. The proposed 15-foot common green tract doesn't provide adequate frontage, it requires more trees be cut, it doesn't -- it creates more impervious surfaces and it is circumventing the flag lot requirement. The last thing I wanted to talk about was modification of prior conditions of approval. In the previous land use review, there have been 30 code compliance violations on this site. The code numbers are listed there for you, they're on the website at b.d.s. Therefore, faulty retaining wall, which was required to be removed as a condition of that 2003 approval, that's a wall that's holding up soil and trees in the back of lot one, and it's never been built to code, it's been in compliance violations for three or four years running now. It should have been handled by now, the hearings officer I don't believe should have approved this and made that a condition again of this new one when it was already a condition of the old land use review. Two of these three code compliance violations are for mitigation plantings that have died and one of them is for mitigation -- for things that were done in -- during the survey process of this current application. In summary, there's been no evidence that the applicant has met his burden of proof that the least impact is happening here, and that the mitigation is offsetting that. I think better alternatives exist in terms of smaller homes, fewer homes, don't put in the greenway with the paving there, and I guess I'm out of time. Thank you.

Potter: We can read the rest of it. Thank you. Are there persons who support the appeal?

Moore: We have one person signed up.

Potter: Please state your name, and you have three minutes.

Leslie Aigner: My name is Leslie Aigner. I own a piece of property in the last 27 years just north of there, and I never had any problem with sliding. And I'm just afraid that the building and removal of the trees and concentrating the water flow will endanger my property and there is no guarantee even though it was a study done who will be responsible, the owner of the land or the city who made the study. I think it's just a north facing slope is always in danger of sliding. And soil, if disturbed, the sliding possibility is always there. And planting new trees will not get hold for several, several years, could be 10 years before it gets really hold. So that will not improve the sliding conditions. So I'm opposing this site, it would endanger my building. It's been there for 27 years. And I never had any problem. Thank you.

Potter: Thank you very much. The principal opponent or the applicant, could you please come forward?

Potter: Another three minutes.

*****: I signed up on the wrong one.

Potter: That's fine. Please state your name when you speak.

Marcus Goldstein: My name is Marcus Goldstein, 3609 Southwest Cullen Boulevard. I am the partial owner besides my wife of the home that's already existing there. There were pictures shown of that home with the jeep in the driveway, so I'm at the hospital of that driveway. Just so the council is clear, that driveway is 10 feet wide at the top, so once you get beyond the tree it's 10 feet wide until you get down to the bottom where there's another tree, where it's actually 13 feet wide. I know this because I measured it, and it should have been 12 feet wide. Nonetheless, the home that's

December 1, 2005

below us at 3617 southwest cullen boulevard was preapproved to be built. The proposed green street that will go in behind my home at 3609 s.w. Cullen proposed to be 20 feet wide and also provide street frontage with the walkway there. It's really inappropriate. It should not be approved, it should have been approved in the original plan to build the home at 3617, which is actually below me. So I am opposed to that. Also in regards to that, the green street and also the proposed sidewalk area that will extend the additional 200 feet or so down to the end of the cul-de-sac, there's proposed to be a walkway or a sidewalk that is there. That is not congruent with the rest of the neighborhood, so while I understand that there is a proposal or in are codes to be followed, I think it's important that the city council in their decision also look at what is the rest of the neighborhood look like? Is it really a benefit or is it not? And who will take care of that is also another issue. That's all I have at this time.

Potter: Thank you, sir.

*****: Thank you.

Potter: Could the principal opponent/applicant please come forward. Thank you for being here. Normally you'd have 15 minutes because b.d.s. Ran over two, i'll give you 17, like I did for the other. Two minutes extra.

*****: We won't need all that time.

Potter: Ok. Please state your name when you testify.

Michael J. Wallace: Michael j. Wallace. Speaking on my behalf will be my attorney.

Ken Ross: I'm ken ross, kenneth b. Ross, i'm the attorney for the applicants. I'll be speaking on their behalf. This won't take very long, because we of course believe that the staff and the hearings officer have done a very detailed and exhaustive analysis based upon all of the data and alternatives that have been submitted to the staff and to the hearings officer and now to the council. I want to address just a couple of points that have been raised. Mr. Mankowski talks about the three-car garage being inconsistent. One of the conditions of the approval is that that would be reduced to a two-car garage and a 20-foot driveway. Those were some of the conditions that were considered with the staff recommendation and with the hearings officer. This maximum disturbance area gets a lot of attention when it exceeds 17%. But what that does is it triggers the environmental review. It's not that you cannot have more disturbance than 17%, it's that if there is going to be disturbance of more than 17%, it triggers the environmental review and all that process under the environmental review considerations and the modifications of that. And as that is being considered, then the various mitigations, the resource values, the resources and the fundamental values, those are all taken into consideration during that environmental review. The one modification that is being asked to be made is actually that it enhances the appearance. It's this turnaround that is at the end of cullen that gets built, and then a portion of the turnaround goes on to lot four and that requires a modification, which the staff recommended and the hearings officer approved with the conditions. And in his finding he concludes that that actually enhances the neighborhood appearance. That's one of the reasons why those things are taken into consideration. I think that really addresses the major points that have been raised here. Each one of the points that have been raised are points that have been considered by the staff. They are points that have been evaluated by the hearings officer, and as the hearings officer has approved with various conditions, there are a number of things that will be to be addressed as we go to preliminary plat and the various other approvals. And of course the applicant certainly infunds to comply with all those conditions. So thank you very much for your consideration. That concludes what we wanted to share with the council.

Potter: Question?

Adams: Has your client been the applicant for the previous land use applications?

*****: Yes.

Adams: Ok. And what is your response to the concern that sequential applications in 1999, 2002, and 2005 have been used to circumvent the code?

December 1, 2005

Wallace: Well, within an organization rules and regulations change.

Ross: Let me address that for you. The staff addressed that as one of the issues. These issues were raised as input was provided to the staff, and these issues were raised with the hearings officer. And the staff concluded and the hearings officer concluded that there had not been violations. There's one violation that is alleged here, but it was found to be unfounded, the one in 2005 was found to be unfounded. The other issue that is being addressed is the retaining wall, and there's actually a concern as to what the appropriate course of action is for this retaining wall. As to whether it will cause more disturbance if it is removed, or less disturbance.

Adams: What was the response, the substance of the response to my question? On the sequential application --

*******:** With respect --

Adams: And the violations is a separate question that we'll get to.

Ross: With respect to the sequential approval process, each one -- that was addressed by the staff, and each one of the approvals --

Adams: I understand. What's the substantive response to my question? Not that the staff listened to it and got -- and passed -- I want to know what the substantive response was for our benefit.

Ross: I don't -- there's no violation. Each one of those approvals was properly taken in accordance with regulations and in accordance with the code. So there weren't any -- there were no improprieties taken, there were -- all the approvals that were given were approvals properly given in accordance with established procedure and in accordance with code requirements.

Adams: And then on the issue of violations as opposed to applications, you're saying that there's just one potential violation, and that staff -- you're working with staff to determine the best remedy?

Wallace: Actually, staff told us to do nothing about it at this time.

Adams: Ok.

*******:** It was going to be addressed at a later date.

Ross: That's the retaining wall. And the retaining wall has to be addressed as one of the conditions here to determine whether the course of action is best to take the retaining wall out or to keep the retaining wall in, and that's a course of action that balances the disturbance that will occur as compared to the potential landslide safety hazard that could occur.

Wallace: We were a little bit under a misunderstanding, but the engineer will write us a report stating how deep it is, what it's constructed of, so that it will meet code.

Ross: We got to get the experts -- there's two experts that need to be -- that need to address situation, and one is the engineer to address the structural integrity and another is an arborist who has to address the trees and plantings in the mitigation efforts.

Adams: Why did you come in with sequential applications as opposed to applications for the wider coverage area? That was your choice, I imagine, but why did you do it that way?

Wallace: Are you speaking of prior submittals to developmental services?

Adams: Correct.

*******:** You can answer that one.

Wallace: As I stated earlier, when you're dealing with a big organization, rules and regulations change. Originally we came in, I don't recall the gentleman's name right offhand, but what he wanted to see and what we wanted to do were two different things. Recollection all the way back from 1999, I don't know exactly what they were -- I don't remember exactly what they were, but he -- so we withdrew and then came back in 2003, and this is off the top of my head, so I don't really recall what 2003 was about, but more than likely it was when we split off the original -- the existing house that Mr. Goldstein now resides in. At one time that was all one parcel, and so it had to be split. The most recent one is the one that's before you today, and I would just like to state that the city code requires in that particular part of town 7's, which is a 7,000 minimum square foot lot. By

December 1, 2005

stating that -- why can't we build on smaller lots, well, because the city says r7, and that's a 7,000-square-foot lot. Theoretically we could build a total of six houses there, but have only proposed four, and the reason for that is because we want to do the least environmental damage as possible.

Adams: Thank you.

Potter: Other questions?

Saltzman: Concerning the issue about the future of the resource tract remaining a resource tract, is there a way we can guarantee that through our decision today?

Ross: That is required to be either held in common or placed into a homeowners association.

We're going to form a homeowners association and the resource tract becomes the property of that homeowners association that is owned by those four lots, and then it is held in perpetuity. It cannot be developed further because it is an environmental resource tract, it is held in the homeowners association in common, which is referred to in the plat.

Saltzman: Ok.

*******:** And according to your codes, that tract can never be developed along with the green space.

Ross: So it is -- it becomes undevelopable because of the way that the title is held and because of the way that the approvals and conditions have been established. So there will be a homeowners association, and that's the best way to hold the property.

Saltzman: And storm water runoff, there was a discussion about pervious paving, though I read in the decision that pervious paving was not deemed to be appropriate for this particular type of soils, at least by the hearings officer. Is that something you looked at?

Ross: The hearings officer addressed that, and the storm water runoff has to go off to the west. So there's got to be drains and there's got to be a water line installed, there's got to be a sewer line installed, and all the storm water runoff has to go to the west along cullen boulevard. And that was one of the conditions that the hearings officer addressed.

Wallace: I believe -- probably the reason for that is when you talk about the type of paving or whether it be rocks or crushed gravel or whatever, that means the water is just going to go straight down into the soil. And obviously with our geology report stating that the ground is stable, in order to be on the safe side, you're better off diverting that into the storm sewer than you are just letting it go back into the ground.

Saltzman: Concerns that were raised about potential for landslides during the time it's going to take for the new vegetation to take hold and do its things in terms of holding soil in place --

Ross: I think that's why the monitoring plan is in place for two years, where it has to be monitored, all the vegetation has to take root, take hold, the whole process has to be monitored and there have to be reports given to the city.

*******:** And then --

Saltzman: Who is liable --

Wallace: It would be the property owners.

Saltzman: In that two-year period?

Wallace: I would believe the property owners would be liable. But as -- it's -- you can't see it on any of the maps you've seen, but the land adjacent to mr. Aigner's property is an old railroad bed, and it used to have a lot of weight going up and down are that bed for a good many years. That land, I lived back in that neighborhood in 1985, and the land where that railroad bed ran is pretty much -- there's not really a lot of trees on it because it was at one time a railroad bed. There might be some smaller trees there, but not anything large. And also to address the landslide issue that was brought up earlier, that's about four or five blocks away on southwest cullen. According to your own reports, because the city was sued over that, the city was deemed not to be responsible for that, and actually the homeowners along cullen and that area were probably the reason for that as they kept pushing out over the slope and started parking their vehicles on that. Over the course of 40

December 1, 2005

years parking your vehicle there made the land finally give way, and -- because that was not the original dirt that was there, that was dirt that was placed there over the course of a number of years.

Saltzman: Thank you.

Potter: Other questions? Thank you, folks.

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

Potter: Are there people who have signed up who oppose the peelee appeal?

Moore: No one else signed up.

Potter: Is there anyone here who opposes the appeal? Ok. Can I call back the appellant? You have five minutes for your rebuttal, sir.

Mankowski: Thank you again. With regard to the existing proposal, this is a proposal of the plat in 2004, and --

Potter: Could you restate your name?

Mankowski: I'm sorry. Eric Mankowski. Excuse me. This proposal here was the previous one on the site. As you can see, it had three of the existing four houses developed where the lot lines were much closer to Cullen. And this now is an area that's going to be owned privately, and there will be no way to preserve that resource tract and wildlife corridor through here when these lot lines come back here and when we add another house here. So this is partly what I'm referring to in that sequential application process. This has -- this was previously proposed. It seems like a viable alternative, it was proposed by the applicant, but it's now not any longer functional apparently. The second point I wish to make is that the claim in 2005 was substantiated. I have the letter here and I will leave it with council clerk. This is a letter from Michelle Steward stating there was violation. The hearings officer's decision incorrectly states that. This letter is dated August 17, 2005, from Michelle Steward, one of the senior planners at B.D.S. I spoke with her prior to calling her attention to the violation that's were occurring. She was very reluctant to come out. She came out, she found nothing, I talked to her again, she came out to the site with me, and she saw the violations, the cutting down of native species and so forth, in preparation for this, that's already occurred. And I asked her what will the city be able to do to enforce this, and she said, "we have too big of a stick. I'm not going to do anything other than write this letter, and" and this letter was hard to get her to write, because she said the minimum process to initiate a complaint would cost the applicant \$10,000 for the environmental review. For cutting down the trees and the process of serving this land. So I've been frustrated because there appears to be no interest on the city's part in enforcing the zoning code violations that have occurred, and which are documented. They have not been dealt with by the applicant, they're on the record in the -- on the site on your website, and this letter is the most recent one of those. So my sense is that, yes, there's a monitoring proposal of two years, whose going to monitor it? Who's going to enforce that? I've found it very difficult, and the mitigation plantings -- plantings have died. It seems to be unworkable to get the applicant to maintain those plantings. The record -- about the driveway issue. I've been down to the bureau and looked at the case record in the last few weeks. There is still correspondence happening back and forth between the applicant and the bureau of development services, both about the retaining wall and about the driveway. The record has beneficially closed, but there continues to be negotiation about the conditions placed on the proposal by the hearings officer. Those letters when I was down at that file yesterday have now been removed. They're not there, I'm not sure where they're at. But there's still debate going on back and forth about the width of the driveway on lot four, whether or not it can be a certain width. Lastly, I just wish to state that the city has put a lot of really, in our minds, valuable attention on the Fanno Creek watershed. There's been a large amount of tax dollars spent to conduct those studies of Fanno Creek watershed, which led to these conservation guidelines. That report was adopted by this council in 1991, and enforcing the conservation guidelines in the way that we're asking from that watershed is just what we hope that you'll be able to find against

December 1, 2005

this proposal, and that the evidence doesn't bring it to -- is not persuasive against those guidelines. So thank you very much for your time.

Adams: Could I ask you a question?

Mankowski: Yes.

Adams: Do you agree, or if you don't, that's fine too, we'll ask staff, do you agree with the applicant's statement that under the existing regulations and rules that he could build six homes instead of four homes?

Mankowski: The 17% is the stated maximum, and I understand that now the way the -- the way that's working is it's triggering this review process, which leads to this discussion which I think is valuable. Based upon that, it appears that you could put -- according to the base guidelines, could you put six houses in there. But if that was all there was to it, we wouldn't bother butting the conservation zone. So without the conservation, zone, yes, six could go there, but that seems to be the purpose of the conservation overlay, is to mitigate the impact of normal development. And so admittedly four is fewer than six, I think three allows that wildlife corridor to function as it is now in a better way.

Adams: Thank you.

Mankowski: I'll leave this letter with you.

Potter: Staff?

Sten: One question for staff.

Potter: Yes. I was going to have commissioner Adams --

Adams: You go ahead.

Sten: I'd prefer commissioner Adams --

Adams: The previous application that's out there that showed the conservation -- resource corridor, was that an application that was approved and then was it a condition for an earlier application?

Parsons: Yeah. I actually want to briefly go over the history of the cases that have occurred on this property. Given just the total number of cases, it looks like there have been a lot of sequential reviews, but in fact it's a lot less. The 1997 land use review was what created this particular parcel. In 1999 there was an environmental review for the existing house that's there now. And the house on the adjacent property. That land use review expired because it's only good for three years, and so then that's when the applicant came in with the 2003 land use review. And this is all laid out on page 5 of the hearings officer decision. So the 2003 review we basically reviewed the development of the two homes again and utilities, and then the number of mitigation planting that's are being discussed resulted from that review. And in 2004, that is when the applicant first came to divide the land into additional lots. That land use review was withdrawn, and a measure 37 claim was submitted. Then with this 2005 land use review, this was the applicant's proposal to attempt to meet our current land use regulations. I want to point out that in 1997 and in 1999 when we looked at the existing homes, how they are now, the land division code was substantially different. So we didn't have regulation that's prohibited flag lots like we do now. And so there were a lot of things at that time that were not evaluated because we were not aware of the type of changes that were going to be made to the land division regulations. So the 2004 review that had the larger environmental resource tract and the three lots with lots about 4200 square feet, that was withdrawn, that was never -- that never went through full review, there was never approval for that. I also want to point out there are a couple different sets of regulations that I think are getting melded a little bit. We have the base zone regulations, which in r7 there's the density of one unit per 7,000 square feet, but in r7 zone you can have a lot as small as 4200 square feet and a lot as large as I think it's 12,000 square feet. The 17% that keeps flying around, that's from the environmental standards. Which allows disturbance areas. So that disturbance area is not dependent or really tied or related to what the lot sizes allowed are, or what the density is allowed by the base zone. What we found I just want to anecdotally convey some information, what we found is that almost all land divisions

December 1, 2005

occurring in environmental zones are not able to meet those percentage allowances. They end up being so stannally small you're not able to get lots that are even slightly consistent with what the neighborhood lot sizes are.

Adams: Do you have knowledge of and can speak to the issue of environmental zone code violation enforcement, or lack thereof?

Parsons: I don't know if the 2005 one in detail -- previously there were code compliance cases opened because of some of the mitigation plantings had died, and I believe as resolution of those -- that case the plantings were required to be replaced. And then another one I believe was for the wall which was being discussed, and there's a condition of approval in this current case that they provide additional information to show that it's geotechnically stable or it's removed under the consultation of an arborist. So I'm not sure what the 2005 is entirely about, I know there was some comments about trees being cut or some vegetation being killed off in the right of way in the southwest cullen right of way that's currently undeveloped.

Adams: Do you have an opinion on whether or not the applicant could build six homes given the base zone and the nondisturbance regulations?

Parsons: In meeting the 17%, not with the existing house as being part of the site. Because the existing house and the disturbance area that was already approved is pretty much at the 8500 square feet.

Adams: Ok. Thank you.

Sten: In terms of the mitigation plan and the ongoing time, I'm trying to remember if there's an analogous to the situation, but in the past we've required bonds to be posted. Would that be something as a condition of approval that you think would make sense on this particular -- I'm not proposing an amount at this point, I don't know, but something that could stay in place while the covenant ran?

Parsons: Yeah, that certainly could be added as a condition of approval, and we've done that on some other cases previously. Usually we'll have that bond provided before final plat, so actually it will hold up the land division until that's provided, and you can have it either cover the cost of just installing the plantings, or you could have it also include the cost of the two-year monitoring. So you have -- so that's something that can be done.

Sten: Ok. You have a hand up, mayor.

Potter: Just a second, sir. Are there other questions?

Saltzman: A couple questions. The environmental resource tract along lots two and three, two through four, I'm sorry, that's a 20-foot-wide resource tract?

Parsons: At the rear of lots two and four?

Saltzman: Right. It was one of the conditions, plant environmental resource tract, rear of lots two through four and easement areas.

Parsons: Those are two separate planting areas. The resource tract is to the east of lot four, and then at the rear of lots two through four is just an additional mitigation area. It's not part of the resource tract as shown on the plan.

Saltzman: I'm getting the words mixed up. Is the wildlife corridor issue, does this provide a continuity consistent with the wildlife corridor, the rear of lots two and four?

Parsons: It does. The thing that -- you would want to be looking at is the plantings are there regardless of whether it's on the lot or on the tract. So something -- something for you to consider is whether you feel it should be placed in a tract for maintenance or ease of monitoring purposes, or if it can remain on the lots. It's done in both ways. I want to point out too that there are a number of existing easements on the rear of lots two and three, and then also on the east lot line of lot one, and so we had to put different mitigation requirements in those areas because it's generally not a good idea to plant trees over utility lines.

Adams: Do all the lots fall in -- completely in an environmental zone?

December 1, 2005

Parsons: Yes.

Saltzman: So this entire proposal has gone through environmental review.

Parsons: Yes.

Potter: There were no alternatives considered. Is that the case?

Parsons: No. The hearings officer did consider other alternatives. This was the alternative that they went -- that the hearings officer decided on.

Adams: Lot one is -- was it ever intended to be part of the natural resource tract?

Parsons: Not as part of this application.

Adams: Under measure 37 claim we're still -- we still consider requests for development in e zones as exempt from measure 37 claims, or --

Kathryn Beaumont: In this case the applicant has filed a measure 37 claim. The applicant has asked to put that claim on hold while they work with staff and pursue the opportunity to divide and develop their property under the existing land use regulations. I can't speak for the applicant, but I think one possibility is that if their land use proposal is approved, the claim may be withdrawn.

Potter: Other questions for staff? Would the attorney like to come back up for response? Could you please come back and talk into the microphone? State your name when you speak.

Ross: Ken ross. Commissioner Sten, you had a question concerning the bond. As one of the conditions of the approval of the hearings officer, it does require that a bond be provided.

Sten: It does, I missed that.

Ross: Yes, commissioner, it does. The bond has to be 125% of the estimated construction costs and also cover costs of the erosion control.

Sten: Ok.

Ross: And that's stated in the hearings officer's decision.

Sten: So you are comfortable with that? Obviously.

Ross: Yes. That's a condition of approval, and that's something the applicant intends to --

Sten: I don't want to tread into a legal area that i'm not 100% sure how this works, the measure 37 area, I don't know if we can actually require you to waive the claim as part of the approval. I suspect we cannot, so i'm trying to get at what -- how you're proposing to approach that, because -- i'm just speaking conceptually, but i'm really not interested in working out something to allow development and seeing new front of me on a measure 37 claim.

Ross: With all due respect, I don't think we can answer that question immediately as to what action we take with respect to the measure 37 claim. I'd want to consult my client and determine what courses of action are.

Sten: I'd certainly want to know that before I voted.

Potter: Would you like to confer now?

*******:** Can we take a moment?

Potter: Please. You can step out in the hall with if you wish.

Ross: If we withdrew our measure -- if we withdrew the measure 37 claim, would it be without prejudice?

Sten: I'm not asking you to tie it to this in any legal tags, i'm just trying to understand where we're at. I'm not asking you to make a legally binding pledge to me. I'm just trying to say, I don't want to be in a game where we're trying to get the best of both --

Saltzman: I'd like to have our attorney comment.

Beaumont: I think it would be prudent to separate the measure 37 claim from the land use review and consider them independently. I don't think it's -- I think it's potentially problematic if the council attempts to play one off against the other.

Sten: I'm not attempting, to i'm just being straightforward. If -- i'm on the fence on this. I have not made a decision as to which way i'm going to vote. I think the appellants make an excellent case, and it would matter to me -- I may prefer not to move on this if i'm going to debate the -- i'm saying

December 1, 2005

I don't understand the legalities, how this is played out. This is the first time in council i've been presented with this situation, but if the council has to separate the two issues, i'd prefer to hear the measure 37 claim first.

Potter: We did agree some time ago when we were discussing strategies for measure 37 to -- if we give the -- we give b.d.s. The chance to work out with folks and hold in abeyance the measure 37 claim to see if there's some other solution we could take, and I think that this is that solution.

Ross: Commissioner, mayor and commissioners, certainly the applicant has invested a lot of time and a lot of effort and worked with the staff and exhausted a tale, and they want to proceed with the subdivision, they want to proceed with the plan for the development of the site that needs all the applicable rules and regulations under existing law under existing code, that is their interest. They want to comply with the conditions of approval, they want to go forward to submit the preliminary plat, and to move forward with the development of the site. That is their interest, that's what they're committed to.

Sten: I suppose -- maybe this is a better way to approach this. I guess what I was really interested in, I think you just said it, is not any type of binding piece that's tied to this decision, I was interested in just simply getting the -- the developer on's intention and generally often a person that's a small town a. Person's word is good enough for me. I'm not asking you to forgo rights. If you change your mind at some point and decide, I need to pursue that claim, that's your right, i'm just trying to understand you're not intending to do that if you get the right to develop.

Ross: That's correct, commissioner. There's no interest to go in and see if they can circumvent the system or to try to come in with some different course of action that is going to completely upset everything that's been done up to this point. They've worked very, very hard, and the staff has worked very, very hard, and they want to proceed with a development in accordance with the plan that has been submitted to the city. To the staff, to the hearings officer, to the city.

Sten: You've answered my question.

Adams: Under the umbrella of trying to ask you to be creative, on lot number four, the proposed house, I don't know how proposed it is in terms of, is this just sort of an example of a footprint, how much space is there between the north -- northeast -- the north corner of the house and the utility easement? How much space roughly is between the two? It's hard for me --

Wallace: I couldn't even venture a guess.

Adams: Would you be willing --

*******:** I don't have a scale on here, so I can't measure it out.

Adams: Would you be willing to provide for more planting area behind that potential house on I think that's lot four so that the natural resource tract -- so you don't have this construction between the natural resource tract and that would be, what, lot three?

Ross: The natural resource tract ends at that line which runs northeastly.

Adams: Correct. The virtual northeast tract right now it's the utility easement. Are you willing to allow for more planting area behind your proposed dwelling on lot four that would make it on the ground seem a little more congruous between the natural resource tract and the 20-foot-wide easement?

Wallace: I'm not sure if -- when I can do that because of the utility easement.

Adams: Let me put it another way. You're going to have toe the planting -- you're going to have this 20-foot-wide easement behind tracts two and three as part of the homeowners association, right?

Wallace: No, I don't believe that is part of the homeowners association.

Adams: What part --

*******:** Two, three, and four.

Adams: Two, three, and four are part of the homeowners association?

Wallace: No.

December 1, 2005

Ross: Well, the homeowners association will own the natural resources tract.

Adams: Ok. And not behind the lots.

Ross: Not behind the lots. Behind the lots are the utility easements.

Adams: Ok. Are you willing to allow for a wider planting area behind -- so the planting areas are -
- are you interested, would you be interested in a wider planting area between your dwellings and
the back of the lot line that in the real world would allow for animals and such to --

Wallace: Let's go back to the animal thing. I object because it was never raised during the original
hearing. Two, if you notice lot one, and then across from lot one further to the west is another
home that's already been built on the old railroad bed. Where are these animals going? There's
homes there. It's a steep slope on both sides of the lot, the house that's farther to the west. And it's -
- when I owned the home years ago there was actually a fence and a gate there. So unless rack
coons are climbing over the -- they're burroughing under the gates, I guess.

Adams: The answer to ricky hall allowing for additional planting area --

Wallace: I would not -- I would not agree to it behind the homes. Because now we're shortening
up the lots again, and they're not going to be like the other homes in the neighborhood, where
they're a hundred foot deep or thereabouts. Once again, we're asking for people to live in -- on
small lots with no place for their children to play.

Adams: All right.

Wallace: Or whatever they wish to do on their lots. I'm not opposed -- I would have to see it in
writing to maybe where we're talking about the natural resource tract, you were talking about up
there in the northeast corner where it -- the line kind of goes at an angle. I'd be willing to consider
making that line straight, but I don't know if that will meet the city's code and regulations. The
utility easement behind lot four, I don't know what is proposed to go inside of there. I'm not an
engineer, so I don't know. I just know I was told I needed it.

Adams: I'm sure we could make that work. He says, as if he knows what he's talking about.

Parsons: There is actually no utility easement behind lot four. That utility easement is actually,
there's an arrow below it pointing to the easement on lots two and three.

Adams: Oh.

Parsons: So lot four is just an additional planting area that's along that rear lot line.

Wallace: I guess I am giving some more planting area, then.

Adams: It's a planting area, but it's the -- the ownership still goes with the adjacent property owner,
right, for lot four?

Ross: Yes. But if it's part -- if it's not on the utility easement such that there would be a
preconclusion from putting trees or shrubs, I can't say there would be any objection to putting some
additional trees and shrubs in an area that doesn't impact the utility easement.

Wallace: Quite honestly, you folks haven't been there, but right behind there is an apartment
complex, and I have every intention of living in lot number four that's going to be my personal
home. And I don't really want to look at apartments. So there will be many trees planted along
there.

Saltzman: To the northeast you're saying is an apartment?

Wallace: To the north of all of this property there are apartment complexes. They run along
southwest capitol highway.

Potter: Other questions?

Wallace: Did we resolve what we were -- are we going to talk further with the city about changing
this line? I don't know if that's something once a decision is made, does it -- it is finalized, or -- if it
will help expediate things if I give this back, and make that line straight?

Adams: What's the answer?

Parsons: I just want to clarify, it's this line on the screen.

Potter: We can't see it.

December 1, 2005

Adams: In a second.

*******:** It's the east side lot line of lot four.

*******:** East boundary.

*******:** It runs northeastly.

Potter: Could you use the pointer?

Parsons: This line. Is that what we're refer to?

*******:** Yep.

Parsons: So council could add a condition that straightened out that line to increase the natural resource tract or increase the planting area --

Ross: On the map it's shown as an existing easement. That may be an existing easement for the benefit of, I don't know where that existing easement is, so let me not hazard a guess.

Adams: What's the green line mean?

Ross: The map does identify that as an existing easement that runs along that lot line.

Potter: So someone has a right to use that.

Ross: That's why the boundary would be set at that easement, because it's that easement that separates the natural resource tract, the environmental resource tract from the lot.

Adams: Can you clarify that for us? There is a green line --

Parsons: The green line is the boundary of the entire mitigation planting area. So that --

Adams: Has nothing to do with easements.

Parsons: No.

Adams: Is that an easement on the backside of lot four, or not?

Parsons: No. That's a planting area. The only easement being added as part of this project is a 20-foot-wide easement at the back of lots two and three, and that's for the sanitary sewer and storm sewer connections.

Adams: Ok.

Potter: Is there anything else you folks wish to say? Thank you very much. Any other questions from the council?

Adams: Mr. Mankowski? I have a question for you. Why did you have your hand up?

Mankowski: I just wanted to --

Potter: State your name, sir.

Mankowski: Eric Mankowski. I wanted to explain that the green line is not publicly held. There's no way when those lots are owned privately that beyond that two years there's any guarantee that those trees stay up. Beyond the mitigation observation period of two years. And this report here that created all this denotes that particular tract of land as a wildlife corridor, and that's in the record. It's been on the record.

Adams: So the plot called natural resource tract, there's no requirement that it remained undevelopment?

Mankowski: Only to the part to the east is apparently jointly owned, and it's --

Adams: The big part.

Mankowski: And what that means legally is I think in question, but -- the other -- the distance between these properties and the apartment buildings is significant. It's got land on it that the eigners were concerned about. Thank you.

Adams: Could we make as a condition of approval that the natural resource tract remain a natural resource tract? Eliminating any legal question about its future use?

Parsons: You could clarify in the condition that's the case. That's a requirement of the land division and of the final plat regardless. When it's platted at the county as a tract, a tract isn't a developable piece of property. It would need to be labeled as a lot or a parcel to be able to be developed. So just the way it's platted, it would ensure that it cannot be developed without some subsequent land use review changing the entire subdivision proposal.

December 1, 2005

Adams: Luckily that's never happened.

Parsons: The maintenance agreement also ensures that the natural resource tract is not developed and that the site remains in a natural state, and that the mitigation plantings are maintained. The city only requires a two-year monitoring and maintenance period, but those plants still need to be maintained at the site, just to comply with the conditions of approval that apply to this land use review. So the two years is just the period where we are involved with looking at the maintenance. So the plantings at the rear of lots two through four need to be maintained beyond the two-year period and remain there.

Adams: Thank you. I think it was -- unless there's more need for questions, I'll make a motion to move the process forward. I move that we -- I "this is your life" is one of my first motions. I'm going to screw it up for sure.

Potter: You got -- the council can deny the appeal, that's the first choice. The council can deny the appeal but ask that new information be considered or ask for amendment language, or the third choice is that the council can grant the appeal. Is that correct, city attorney?

Beaumont: Yes, it's basically grant the appeal, deny the appeal, or deny the appeal and modify the hearings officer's report.

Adams: I'm going to try number two, mayor. Deny the appeal with some -- I move we deny the appeal but we make as a condition of our actions that the natural resource tract, however we need to legally describe it, cannot be developed in the future, and that we straighten out and get a little more property. It's not much, and that is my motion.

Sten: Should we entertain discussion before second?

Adams: Absolutely.

Sten: These are tentative findings we make today, I would say to both sides. So what happens is they get written up. I would ask that a friendly amendment to the motion that the staff and attorney review the bond requirement of the hearings officer and give back an opinion that -- actually what I'd say is -- let me change that. I would amend it to say that includes a bond that is adequate to ensure what's been promised to the neighborhood, and if that -- if in your opinion that is there now, then I want to hear a little bit more about that as part of your review. If it needs to be strengthened, if it needs to be a larger bond, I want to be open to do that. I want to make sure there's enough money to pay for the mitigation and the monitoring during the time period so it's done properly, and that there's a procedure in place to make sure that bond means something, that it's not just sitting there. If those conditions are adequate now, that's fine, if they're not, I want to talk about getting them there.

Adams: And a friendly amendment to my earlier motion is that you have some -- you put more trees on the additional planting areas, as you plan to do anyway, and we'll say five trees. Whatever the urban forester tells you to plant.

Potter: I hope someone got all this down.

Beaumont: Let me give it a try. As I understand it, the motion is to deny the appeal, to uphold the hearings officer's decision with the following modifications. First, to add a condition that the natural resource tract cannot be developed in the future. And second, to modify the -- and straighten out the lot line between the natural resource tract and lot four. Third, possibly to add a condition to assure that the bond that's required is adequate to pay for the mitigation and monitoring, if that condition is necessary. And four, to add a requirement that a minimum of five additional trees be planted in the additional planting area shown on the proposed plat.

Adams: Behind lot number four.

Beaumont: Behind lot number four.

Sten: And concurs it is his motion, I will second it.

Adams: I concur.

Potter: Did the applicant wish to make any comment on this before we vote?

December 1, 2005

Ross: Kenneth b. Ross. That sounds like a reasonable course of action, which the applicant can comply with.

Potter: Thank you, sir. Please call the roll.

Adams: Honestly I wish we could have done better, but I don't think the law is on our side. Aye.

Saltzman: Aye.

Sten: I just want to explain, I think did you an excellent job as the appellants as analyzing this. As I go through these pieces there's objective standards that I believe they meet, and there's subjective standard, and the key one in this case is alternative criterias. And the problem with alternative criteria is they're in the eye of the beholder. I think you've got pretty close on it. I -- as a matter of philosophy tend to uphold the staff and the hearings officer if they've done the detailed work, and in this -- i've seen times where I don't believe the hearings officer has really looked at alternatives. In this case given the six lots and the other issues there, I believe you can make a case that a three-unit subdivision is better, but I think it gets -- I think the hearings officer was correct that four units gets over the bar at looking at alternatives. I think they did get over it, and it's important to me that i'm consistent on those votes. So I thought you made a good argument. I hope these little pieces we did help some, and I want to make it clear it's my intent, and I think it's -- I would guess I could speak for everybody to see that all this is properly implemented, because I heard loud and clear the argument that you made that you felt that the agreements weren't being enforced, and an agreement only makes sense fits being enforced. So I take the applicant's word that they're going to adhere are terror these pieces. I want to make sure the bond is strong enough, and that the proper inspections and things are done so that the neighborhood can feel like -- because a lot of what I heard was pieces about, this isn't quite good enough, but we don't think that's going to happen. And I want to make sure at least that happens. So aye.

Potter: Aye. [gavel pounded]

Beaumont: We have a timing question. This was a tentative vote. Unless we can bring the findings back next week we need the applicant to grant us an additional period of time to extend the 120 days so we have enough time to bring back findings and the additional conditions you've requested today.

Potter: Applicant, could you please step forward and state your name and respond?

Sten: On you long -- how long would it take to get finding?

Beaumont: It's just drafting the additional conditions. Is that correct? Is that something we can do by next week?

Parsons: Yeah, we could do that.

*****: In that case I guess if we can continue it for one week.

*****: We're getting exercise, though.

Ross: Kenneth b. Ross for the applicant. That's satisfactory.

Potter: That being what?

Ross: If you need a one-week extension? Do we need to waive the 120-day period by an additional week?

Beaumont: As a precaution can you grant us an additional week? Our goal will be to bring it back and have it back on the council calendar next week.

Ross: The applicant agrees to an additional week.

Potter: Ok. Thank you, folks.

Adams: Before the mayor gavel down, to second what commissioner Sten said in terms of the neighborhood, if as we move forward there's any violations, and you don't get the appropriate response from city personnel, by all means let us know, and don't just stop with that. Let us know and we'll follow it.

Moore: We need to announce the date, katherine. The next thursday is taken, so it will have to be wednesday the 7th at I would probably say 4:45.

December 1, 2005

Saltzman: 4:45?

Moore: We've got a full schedule next week.

Potter: You got his attention that way.

Saltzman: It seemed like a weird time, but ok.

Potter: Ok, folks, thank you very much for coming in. Appreciate it. That's the last item on the agenda. Council is adjourned.

At 3:42 p.m., Council adjourned.