



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **3RD DAY OF JANUARY, 2007** AT 9:30 A.M.

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

At 10:14 a.m., Council recessed.

At 10:34 a.m., Council reconvened.

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

**Motion to elect Commissioner Leonard President of the Council:** Moved by Commissioner Saltzman and seconded by Commissioner Sten. (Y-4)

On a Y-4 roll call, the Consent Agenda was adopted.

| <b>COMMUNICATIONS</b>                 |   | <b>Disposition:</b>   |
|---------------------------------------|---|---|
| 1                                     | Request of Louise Kasper to address Council regarding Multnomah Master Gardeners (Communication)  | <b>PLACED ON FILE</b>   |
| 2                                     | Request of Reynaldo Ko to address Council regarding Multnomah County dog complaint process (Communication)  | <b>PLACED ON FILE</b>   |
| <b>TIME CERTAINS</b>                  |   |   |
| 3                                     | <b>TIME CERTAIN: 9:30 AM</b> – Grant a franchise to PacifiCorp for a period of 20 years (Ordinance introduced by Commissioner Saltzman)   | <b>PASSED TO<br/>SECOND READING<br/>FEBRUARY 7, 2007<br/>AT 9:30 AM</b> |
| 4                                     | <b>TIME CERTAIN: 10:30 AM</b> – Recognize Metro Nature in Neighborhoods grant program long-term effort to conserve and restore nature throughout the urban area (Report introduced by Commissioner Saltzman)<br><br><b>Motion to accept the Report:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman.<br><br>(Y-4) | <b>ACCEPTED</b>   |
| <b>CONSENT AGENDA – NO DISCUSSION</b> |   |   |

**January 3, 2007**  
**Mayor Tom Potter**

|   |   |   |
|---|---|---|
| <b>Bureau of Planning</b>                                     |   |   |
| <b>*5</b>   | Increase contract with Palmer, Groth & Pietka Valuation, Inc. in the amount of \$45,000 for Measure 37 analysis (Ordinance; amend Contract No. 39566)<br><br>(Y-4)  | <b>180695</b>   |
| <b>Office of Management and Finance – Business Operations</b> |   |   |
| <b>*6</b>   | Pay claim of V'Ester Brown (Ordinance)<br><br>(Y-4)   | <b>180696</b>   |
| <b>*7</b>   | Pay claim of Mark Green (Ordinance)<br><br>(Y-4)  | <b>180697</b>   |
| <b>*8</b>   | Pay claim of Austin Leroux (Ordinance)<br><br>(Y-4)   | <b>180698</b>   |
| <b>9</b>  | Authorize a contract and provide for payment to furnish replacement vehicles (Ordinance)  | <b>PASSED TO<br/>SECOND READING<br/>JANUARY 10, 2007<br/>AT 9:30 AM</b> |
| <b>Office of Management and Finance – Financial Services</b>  |   |   |
| <b>*10</b>  | Authorize contract with Kirkpatrick & Lockhart Preston Gates Ellis LLP for bond counsel services (Ordinance)<br><br>(Y-4)   | <b>180699</b>   |
| <b>*11</b>  | Authorize contract with Orrick, Herrington & Sutcliffe LLP for bond counsel services (Ordinance)<br><br>(Y-4)   | <b>180700</b>   |
| <b>Office of Management and Finance – Human Resources</b>     |   |   |
| <b>12</b>   | Create a new Nonrepresented classification of Water Administrative Manager and establish a compensation rate for this classification (Second Reading Agenda 1700)<br><br>(Y-4)  | <b>180701</b>   |
| <b>Office of Management and Finance – Purchases</b>           |   |   |
| <b>*13</b>  | Authorize two Intergovernmental Agreements with the Tri-County Metropolitan Transportation District to have Equal Employment Opportunity and Workforce Program requirements on the Commuter Rail Project and South Corridor Light Rail Project (Ordinance)<br><br>(Y-4) | <b>180702</b>   |
| <b>Police Bureau</b>  |   |   |
| <b>*14</b>  | Amend an Intergovernmental Agreement with Multnomah County District Attorney Office to reimburse the Police Bureau for Detectives trained in child abuse investigations in FY 2006-2007 (Ordinance; amend Contract No. 51581)<br><br>(Y-4)                              | <b>180703</b>   |

**January 3, 2007**

|  |  |   |
|--|--|---|
| <b>*15</b>   | Authorize an Intergovernmental Agreement between Housing Authority of Portland and Portland Police Bureau to provide police officer patrol services at New Columbia housing sites (Ordinance)<br><br>(Y-4)   | <b>180704</b>   |
| <b>Commissioner Sam Adams</b><br><br><b>Bureau of Environmental Services</b>     |  |   |
| <b>16</b>  | Amend Joint Funding Agreement with the U.S. Geological Survey to evaluate toxics in sediment and water in the Columbia Slough (Second Reading Agenda 1707; amend Contract No. 35735)<br><br>(Y-4)  | <b>180705</b>   |
| <b>17</b>  | Authorize Intergovernmental Agreement with Portland State University to coordinate Community Watershed Stewardship Grants (Second Reading Agenda 1708)<br><br>(Y-4)  | <b>180706</b>   |
| <b>18</b>  | Authorize Grant Agreement with the Friends of Tryon Creek State Park to partner on three watershed enhancement projects (Second Reading Agenda 1709)<br><br>(Y-4)  | <b>180707</b>   |
| <b>19</b>  | Authorize Bureau Director to execute technical assistance agreements for a maximum of \$3,000 each with eligible, qualified businesses to receive professional services and secure certification through the Ecological Business Program (Second Reading Agenda 1710)<br><br>(Y-4) | <b>180708</b>   |
| <b>Office of Transportation</b>  |  |   |
| <b>*20</b>   | Authorize an addendum to Intergovernmental Agreement with Oregon Health Sciences University to designate person in charge authority for Portland Aerial Tram operations (Ordinance; amend Contract No. 52689)<br><br>(Y-4)   | <b>180709</b>   |
| <b>Commissioner Dan Saltzman</b><br><br><b>Office of Sustainable Development</b> |  |   |
| <b>*21</b>   | Authorize application to U.S. Department of Energy for a \$200,000 Solar America Initiative Solar City Strategic Partnerships grant to fund activities to further the market expansion of solar within the City (Ordinance)<br><br>(Y-4)   | <b>180710</b>   |
| <b>22</b>  | Extend contract with Portland State University to complete work on the Commercial Recycling Project (Ordinance; amend Contract No. 35806)  | <b>PASSED TO<br/>SECOND READING<br/>JANUARY 10, 2007<br/>AT 9:30 AM</b> |
| <b>Commissioner Erik Sten</b>  |  |   |

**January 3, 2007**

**Bureau of Housing and Community Development**

- \*23** Authorize Intergovernmental Agreement with the Portland Development Commission for \$200,000 to administer funds for the rehabilitation of low-income housing contaminated by drug production and provide for payment (Ordinance)

(Y-4)

**180711**

**Fire and Rescue**

- \*24** Authorize Agreement with College of Emergency Services for Paramedic Field Experience training (Ordinance)

(Y-4)

**180712**

**REGULAR AGENDA**

**Commissioner Sam Adams**

**Office of Transportation**

- 25** Authorize an Intergovernmental Agreement with the Tri-County Metropolitan Transportation District to provide enhanced security and cleaning during construction of light rail facilities on 5th and 6th Avenues (Ordinance)

**PASSED TO  
SECOND READING  
JANUARY 10, 2007  
AT 9:30 AM**

**Commissioner Dan Saltzman**

**Parks and Recreation**

- 26** Amend an Interagency Agreement for Portland Parks and Recreation with the Portland Development Commission for professional and technical services for park improvements for FY 2006-2007 (Ordinance; amend Contract No. 52770)

**PASSED TO  
SECOND READING  
JANUARY 10, 2007  
AT 9:30 AM**

**City Auditor Gary Blackmer**

- 27** Amend the Comprehensive Plan Map designations and change zoning at 5828 N Van Houten Place at the request of the University of Portland (Second Reading Agenda 1726; LU 06-132925 CP ZC)

(Y-4)

**180713**

At 10:51 a.m., Council recessed.

**January 3, 2007**

|  |  |
|--|--|
| <p><b><u>WEDNESDAY, 2:00 PM, JANUARY 3, 2007</u></b></p> <p><b>DUE TO LACK OF AN AGENDA</b></p> <p><b>THERE WAS NO MEETING</b></p> |  |
|--|--|

**January 4, 2007**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **4TH DAY OF JANUARY, 2007** AT 2:00 P.M.

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

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

**28 TIME CERTAIN: 2:00 PM** – Appeal of Blue Sky Planning, the applicant's representative, against the Hearings Officer's decision to deny a proposal to divide a 1.9 acre site into a 30 lot subdivision located at 13415 SE Foster Road (Hearing; LU 06-131422 LDS)

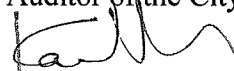
**Motion to overturn the Hearings Officer's decision consistent with the Staff Recommendations and to refund the \$5,000.00 appeal fee:**  
Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-4)

**Disposition:**

**TENTATIVELY  
UPHOLD THE APPEAL AND  
OVERTURN THE  
HEARINGS OFFICER'S  
DECISION;  
REFUND THE \$5,000 FEE;  
PREPARE FINDINGS FOR  
JANUARY 17, 2007  
AT 9:30 AM**

At 2:34 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.

**January 3, 2007**  
**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.

[ The following text is the byproduct of the closed captioning of this broadcast. The text has not been proofread, and should not be considered a final transcript ] \* \* \*

**JANUARY 3, 2007 9:30 AM**

**Potter:** We're going to begin. Welcome to the first Portland city council hearing of 2007. As you may recall, in may of last year three of our public officials were reelected by the voters of Portland. With the new year, each begins a four-year term of office. We kick off this morning with the swearing-in ceremony of those three electeds -- auditor gary blackmer, commissioner dan Saltzman, and commissioner erik Sten. The oath of office will be administered by judge dale koch, presiding judge of Multnomah county circuit court. Judge koch, folks, let's proceed.

**Judge Dale Koch:** Are the balloons up there somewhere, you just don't see them, ready to fall? [laughter] ok. Each raise your right hand and repeat after me. I -- and state your names, do solemnly swear --

**Oath repeated by Auditor Blackmer and Commissioners Saltzman and Sten:** Do solemnly swear.

\*\*\*\*\*: That I will support the constitution of the united states.

\*\*\*\*\*: That I will support the constitution of the united states.

\*\*\*\*\*: And of the state of Oregon.

\*\*\*\*\*: And of the state of Oregon.

\*\*\*\*\*: And the charter of the city of Portland.

\*\*\*\*\*: And the charter of the city of Portland.

\*\*\*\*\*: And its laws.

\*\*\*\*\*: And its laws.

\*\*\*\*\*: I will faithfully, honestly, and ethically.

\*\*\*\*\*: I will faithfully, honestly, and ethically.

\*\*\*\*\*: Perform my duties.

\*\*\*\*\*: Perform my duties.

\*\*\*\*\*: As an -- state your titles they all said the right one -- I have no undisclosed financial interest.

\*\*\*\*\*: I have no undisclosed financial interest.

\*\*\*\*\*: In any business located in Portland.

\*\*\*\*\*: In any business located in Portland.

\*\*\*\*\*: Or having contracts with the city.

\*\*\*\*\*: Or having contracts with the city.

\*\*\*\*\*: I hold no other office.

\*\*\*\*\*: I hold no other office.

\*\*\*\*\*: Or position of profit.

\*\*\*\*\*: Or position of profit.

\*\*\*\*\*: And I am not a member.

\*\*\*\*\*: And I am not a member.

\*\*\*\*\*: Of any partisan political committee.

**January 3, 2007**

\*\*\*\*\*: Of any partisan political committee.

\*\*\*\*\*: So help me god.

\*\*\*\*\*: So help me god.

**Koch:** Congratulations, gentlemen.

\*\*\*\*\*: Thank you, judge. [applause]

\*\*\*\*\*: Congrats on the nice award the other day. You gave a nice speech.

\*\*\*\*\*: Back to work.

**Potter:** Gentlemen, do you wish to say anything?

\*\*\*\*\*: Oh, no. [laughter]

**Potter:** You see three politician and no one saying anything --

**Leonard:** There's something wrong.

**Saltzman:** I'm just exceedingly grateful to the voters of the city of Portland who have reelected me to a third term. It's very humbling to have the support of the citizens of this city, and I pledge as I've pledged in the past to work with the up most -- utmost integrity to make sure that government respond to the needs of our citizens, and our people in our city, and that we never forget those in need of our services, whether they're children, older adults, people with disabilities, these are people that I have pledged a substantial part of my career towards working for, and I will continue to be a voice for them on the city council. Thank you very much. [applause]

**Sten:** Thanks, dan, I'm also humbled and energized to get to work. I think we all decided to get to work this morning and keep things going. It's very exciting -- [no audio] I think Portland is a wonderful place that can just get better if we keep working together. We have a chance to turn the corner on schools, on affordable housing, the business climate, the environment, and I think we have a terrific mayor and a council who's ready to work together, and an auditor who is keeping us honest and getting smarter. So it's a great pleasure and I look forward to working with all of you, and let's all get something done this year. [applause]

**Blackmer:** As your city auditor I'm fortunate to have a great office of very dedicated and professional employees who have really I think raised the quality [inaudible] Karla is one of my best employees. [laughter] the sound system doesn't work for us, unfortunately. It works for I guess the technicians. In any case, I really appreciate the hard work and dedication of the staff in the office, and they really have done a wonderful job I think of bringing Portland out to the public, making sure we are providing information about what the city does, and making sure that we're helping the city do a better job. So I owe a great debt of gratitude to them and to the citizens of Portland for electing me and letting me do this for another four years. Thank you. [applause]

\*\*\*\*\*: We need to come over and sign each of the oaths.

\*\*\*\*\*: We do have paperwork here.

**Potter:** Would any of the newly-appointed officials like to introduce family members?

**Saltzman:** I'd like to introduce my mother. [inaudible] [applause] [inaudible]

**Sten:** My toddler is a little under the weather this morning, so we couldn't quite get him here. He's watching on television.

**Potter:** Please come up if anybody wants to shake the hands of these fine folks, please feel free to. Anybody want to shake hands? Ok. Quiet observers. Before we begin the official part of the council proceedings, as we could each -- do each week I ask a question of the audience, and the question is -- how are the children? The reason we ask that question is that we know when children in our community are well, the community is well. Each week we have someone come in to speak to us regarding children and their issues. Her favorite subjects are science, art, and government. I think we've got a future mayor or city commissioner here. Hillary, could you please come forward?

**Hillary Sanders:** Hi. Thanks for having me here today. It's very cool. I think my main point I would like to press for our government is that we should focus on long-term effects instead of the



**January 3, 2007**

short-term effects of the actions we take. Instead of days, months, years, it should be days, months, years, hundreds of years, thousands of years. One of the of things I think the government should do now, although realizing you don't have that much power, since it's not the federal government, is put huge taxes on things that are bad for the environments and society. Like big cars, oil, cigarettes, cigars, trans fat, pesticides, etc. Consider legalizing marijuana and taxing it. You're killing two birds with one stone, which is bad, but -- what to do with the money? I think three things that are really important is education. One thing. Education, smaller class sizes, kind of -- kids are forced to be in these huge classes and wasting so much of time, sometimes, when they could really be blossoming intellectually with smaller class sizes and better teachers. A second thing, the environment. Alternate forms of energy, global warming, preventing nuclear disaster. More trees, more animals, etc. Third thing I think you should put money into is public transportation. Having less cars on the road and more buses. I think you should try to make it classy, try to make it so stuck-up people don't think of it as the poor people transportation, make it more often, make it so we're not scared we're going to get groped by a drunk person every time I go on the bus, which has happened. That's not good. Also, i'm not sure if you guys have control over this, but I don't think government aid should be judged by race or sex, because it's racist and sexist. It should be judged by the opportunities that are afforded to you at that time. Like -- I don't understand why I should be able to get into colleges easier that -- that are run by the government just because i'm a female, because all it tells me is i'm not good enough to get in on my own, and it's unfair to males. I think my last point is -- I know you don't have much control over this, the military commissions act is sick, wrong, and disgusting, and I think it should be nullified as soon as possible. Thank you very much.

**Potter:** Thank you. Before you leave, I have a question for you. I noticed on your bio you like to watch cspan. It also says while you're watching it you often throw food at the t.v. when unintelligent people come on.

**Sanders:** Quite often. They're all pretty intelligent people, though.

**Saltzman:** It's a good thing you don't watch channel 30. [laughter]

**Sanders:** I like you guys. You guys all rock.

**Potter:** Thank you, hillary, very much. Can we give her a hand? [applause] nice to know we got young folks out there like that. I can't wait until she takes on the power herself. She definitely has a few opinions about that. [gavel pounded] city council will come to order. Karla, please call the roll. [gavel pounded]

**Potter:** Before we start the agenda, we need to elect the next council president. I need a motion to elect commissioner randy Leonard as the next president for the council.

**Saltzman:** So moved. I had to think about it.

**Sten:** Second.

**Potter:** Ok. Please call the vote.

**Leonard:** I'll try to fill in the large shoes of my successor. Predecessor. Aye.

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

**Potter:** Aye. [gavel pounded] i'd like to remind folks -- [applause] prior to offering public testimony to city council, a lobbyist must declare which lobbying entity he or she is authorized to represent. Communications. Please read the first one.

**Item 1.**

**Potter:** Thank you for being here this morning. Thank you for the lovely potted plants for us.

**\*\*\*\*\*:** Most welcome.

**Potter:** Please state your name when you speak. You have three minutes.

**Louise Kasper:** My name is louise kasper. I represent the Multnomah chapter of master gardeners. We're trained volunteers, trained by o.s.u. Extension service. We are master gardeners, active in 30 counties and have continued to meet the gardening needs of Oregonians through three

**January 3, 2007**

decades. We have about 300 members in Multnomah county who contribute thousands of hours of volunteer service to our city and our area. Our services range from diagnosing plant programs, recommending treatment, teaching, and encouraging sustainable gardening, safe pest management practices, water quality protection, yard waste management, composting, gardening with children, seniors, and persons with disabilities, and as our colleagues in virginia say, master gardeners know all the good dirt. Our services take us to the international rose test gardens, leech botanical garden, crystal springs, the pittock mansion, peninsula park, doernbecher hospital, just to name a few. We bring you these plants, courtesy of Portland nursery, and along with them, extend to you our best wishes for 2007, and we thank you for letting us join you today.

**Potter:** Thank you very much, louise. And thank you folks for all you do for our community to make our parks and gardens beautiful in Portland. So thank you very much. Please read the next item.

**Item 2.**

**Potter:** Thanks for being here, sir. When you speak, please state your name for the record.

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

**Potter:** You have three minutes.

**Reynaldo Ko:** Good morning, mayor Potter. Congratulations to the new commissioners. Happy new year to everybody. I'm here to speak about the quality of life which is -- seems to be the popular subject matter over the neighborhood, and also the -- seems to be the agenda for most politicians. Quality of life and the -- the quality of life. This is one agenda I have been afflicted with, the problem is the dog barking problem. Which is controlled by the Multnomah county -- Multnomah county dog commissioners. The county, Multnomah county does not have enough personnel to implement the dog barking problem. I've had this dog problem with my neighbor for nearly a year last year, and I supplied the required, necessary documents to get the barking dog's owners to comply with the laws. And I supplied them with the v.c.r. For over 30 minutes, and it took them so long to open it, when they finally wanted to act on it, it was so months passed, and they called me back and told me, mr. Ko, i'm sorry that you -- your document has been so long we have problems in enforcing the dog barking law. Mayor Potter, i'm sorry, I did not specify my name. I am reynaldo ko. Getting back with the subject matter here, the dog barking law is only enforced by the Multnomah county. They don't have enough personnel to supervise or to implement the laws about dog barking. Portland could have the -- help the public about this dog barking problem. I know there's a lot of people who -- myself included, I need the -- I love dogs, and I know dogs always bark. But this unpleasant problem with complete barking with the neighbor is just a pain for neighbors, and I think -- get canning back with the quality of life, it affects my quality of life by having this constant dog barking, and it's so hard to get the county to implement the laws. I just hope that the city of Portland may be able to do something about having its own implementation about the dog barking problem and have the quality of life of the city of Portland a much better way of living. Thank you very much, mayor Potter and all the -- also the commissioners. You have a good day and a good year.

**Leonard:** I just might add, I had to spend a little time in this subject area, and I know we have an intergovernmental agreement with Multnomah county to enforce for us the dog barking ordinance. And Portland actually does have its own ordinance separate from the county. But I would -- given I spend a little time, if you would stop at my office and maybe leave your name and a contact number, we can follow up and see what we can do to help.

**Ko:** I appreciate that very much. By the way, I sent a letter, a note --

**Leonard:** Yes.

**Ko:** Right. I have a copy of that already. So commissioner Leonard --

**Leonard:** The office is right outside here. You can stop there and let them know.

**Ko:** Thank you very much again.

**January 3, 2007**

**Leonard:** Via soft heart for people who are bothered by dogs barking.

**Potter:** John, could you show him where commissioner Leonard's office is. If you go with John back there, he'll show you the commissioner's office. And that's the communications. We'll move to the consent agenda. Do any commissioners wish to pull any items off the consent agenda? Does any member of the audience wish to pull any items from the consent agenda? Karla, please call the vote.

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

**Potter:** Aye. [gavel pounded] please read the 9:30 time certain.

**Item 3.**

**Saltzman:** Mr. Mayor, members of the council. In October of 2005, the city council directed the office of cable, communications, and franchise management, along with the office of sustainable development, to prepare a franchise agreement with PacificCorp, and I'm pleased to bring this franchise agreement to council today, embodying over a year of work by city and PacificCorp staff. I want to thank both city staff and PacificCorp representatives, Pacific Power representatives, who have worked very hard over the last year, and I appreciate the problem-solving attitude that both sides have brought to the negotiating table. As issues arose, both parties brought a can-do spirit which allowed us to come up with creative solutions. I believe the franchise represents a formal agreement that will stand the test of time and serve the citizens of Portland well. It clearly lays out the respective responsibilities of both Pacific Power and the city for the next 20 years, and reflects the city's policy regarding energy usage. We look forward to continuing the great working relationship with Pacific Power that we have experienced in reaching this agreement over the past year, and I want to take this opportunity to individually recognize and thank the negotiating team for their hard work. From the city the cable and franchise management office, David Olson, Mary Beth Henry, David Solos and Sue Sloan. From the sustainable development office, we have Susan Anderson and Michael Armstrong, from PDOT we have Don Gardner, Richard Gray, Rich Johnson, from the city attorney's office, it was Ben Walters and Jan Bets. From the bureau of technology services, Matt Lamp and Logan Klier. From parks, David McAllister, from Pacific Power, the team consisted of Pat Witten, the new president, Sheila Holden, Bernie Bottomly, C. Coleman, Jeff, Mark Nelson, John Webber, and Don Jones Jr. I'd like to call up Mary Beth Henry from the cable office, Michael Armstrong from the sustainable development office, as well as Pat Riden and Sheila Holden from Pacific Power.

**Mary Beth Henry, Office of Cable and Franchise Management:** Thank you, commissioner Saltzman. Mayor and commissioners, I think sometimes it's good to review the basics --

**Potter:** State your name for the record.

**Henry:** Mary Beth Henry, office of cable communications and franchise management. In this case the basics would be what is a franchise. A franchise is simply an agreement that outlines the rights and responsibilities of the grantee, the entity seeking the franchise in the city. Any public or private utility or entity wanting to place facilities in the city streets needs a franchise. And it's a two-way document. The agreement covers everything from franchise fees for the city's general fund, in this case over \$5 million annually, to the city's right to audit, to relocation of facilities in the public interest, to insurance and bonding. To the length of the agreement 20 years, to tree trimming, just to name a few of the 22 sections in the franchise. Pacific Power's territory covers northeast and part of north Portland as well as part of downtown. Our office served as the facilitator with the content experts from the office of transportation, city attorney, parks, technology services, and the office of sustainable development who provided the expertise. I'd like to echo commissioner Saltzman's thinking, both the staff from the city and Pacific Power, for their willingness to tackle the sometimes difficult issues and other issues were just plain tedious to work through. But all very important for our citizens and the city of Portland. As commissioner Saltzman said, we worked very hard over the last year, and staff wholeheartedly recommends that the city council move the franchise forward

**January 3, 2007**

for final approval. I'm happy to answer any questions and michael armstrong has a few words also.

**Michael Armstrong, Office of Sustainable Development:** Thank you. My name is michael armstrong, I work in the office of sustainable development. As mary beth noted, the franchise has 22 provisions. One of those addresses global warming. Section 17. I think in the past this would have been quite unusual, but global warming is so important, both economically and environmentally, and it's so directly related to energy use, it seems only logical to include it here. The provision that's in the franchise calls for pacific power and the city to find ways to work together to carry out the city's global warming plan. We've got one example underway, and that's pacific's participation in the development of a resource conservation program for businesses. This will launch later this spring and will help make it easier for businesses to get access to resources, incentives, other information around energy efficiency, waste reduction, water conservation, and transportation options related services. We very much appreciate pacific's recognition of this issue and I think generally I would also echo the comments about the problem-solving spirit of this negotiation, and we are pleased to support the franchise. Thank you.

**Pat Reiten, President, Pacific Power:** Good morning. I'm pat reiten, the president of pacific power. Thanks, commissioner Saltzman, thank you michael, thank you mary beth, good morning, mayor Potter, good morning commissioners. I suppose I should also say happy new year. This has been a very amicable franchise renewal. I understand from our team. So we've come to thank the council, the city staff for your work with us over the past year. We truly have worked together to present the council with an agreement we think we all can be proud of. And it will stand the test of time. Maybe just a few words about who we are. Pacific power is a regulated electric business. We're headquartered here in Oregon. We deliver electrical energy to customers in Oregon, Washington, northern california, some 78,000 customers. 530,000 of them are located in the state of Oregon, some 68,000 here in the city of Portland. We are a division of pacificorp, which is also headquartered here in the lloyd center district. But pacific power -- pacificorp also includes rocky mountain power, which serves about a million customers on the east side, idaho, utah, wyoming, and pacificorp energy, which is responsible for wholesale energy management that also is headquartered in salt lake city. Pacific power employs about 1,970 employees in Oregon, the majority of those are here in Portland. I joined pacific power as president in september, have the distinction of being both a native Portlander and one of the few people brought in by the new owners, mid american energy holdings company, which purchased pacificorp in march 2006. Knowing your interest in sustainable business practices, I thought you'd be particularly interested in the commitments mid american made upon the merger. Those include making cost-effective renewable energy even a larger part of our energy resource mix. We have committed to bring 100 megawatts of cost effective new wind resources on in service by late march 2007. And have to the extent available, agreed to bring 400 megawatts of cost effective new renewables by the end of 2007, as well as 1400 by 2015. Currently you'll have to excuse the pun, we have blown away that 71st commitment already. We're on track to exceed the 400 megawatt commitment. We currently have 220 megawatts of new renewables and commercial operation, including wind, biomass, and low-impact hydroelectric generation. In fact, we just signed a contract yesterday for another 10 megawatts of biomass in the city of lions, Oregon. Michael mentioned this agreement. The focus on those issues, which is why I bring those facts up. We're awfully happy that the franchise agreement recognizes some local impacts to the wholesale energy management decisions we make as a company. There is a funding agreement to encourage sustainable energy and efficient business practices. I know we have agreed to -- corporate carbon emissions. I think those things are good practices, and we're happy to agree to them. So i'd like to point out that while we're meeting those commitments, we're doing it in a way that maintains low-cost, reliable portfolio of resources and keeps our customers and communities competitive. We continue to have a record of responsive

**January 3, 2007**

customer service and electricity rates that are among the lowest in the region and the nation. In fact, our prices haven't increased as fast as inflation over the past five years or more, they've been relatively flat. We're working hard to keep electric rates as low as possible while still investing in the system to make sure it's reliable. We also have an enviable record I think in customer satisfaction, particularly amongst commercial industrial customers. That's a record I'm proud of. I point it out not to be self congratulatory on behalf of the company, but to show we're operating in a way that's worthy of the relationship that this franchise agreement represents. Pacific power values our relationship with the city of Portland. That's why we're here today. The franchise represents the formal commitment between Pacific and the city of Portland and enables us to continue to provide safe, reliable, affordable energy needs of our customers, and your citizens, and so I'd like to close by just personally thanking Mayor Potter, the commissioners, for access to your offices during our negotiations, a special thanks to Commissioner Saltzman and his staff for what was really an excellent negotiation process that emphasized prudent decision making and a document that we all think will stand the test of time. Thank you.

**Potter:** Thank you.

**Sheila Holden, Regional Manager, Pacific Power:** Good morning, Mayor Potter, commissioners. Commissioner Saltzman, special thanks again. My name is Sheila Holden, regional management for Pacific Power. It was a pleasure to supposedly lead the process on our side along with David Olson, who I understand is in the Ukraine today for the two teams negotiating the new franchise. It may have seemed early on that Pacific Power was kind of pushy trying to hurry up and get the process started, and that was because we do value and understand the importance to us of having a franchise with the city of Portland. We have about 514 franchises with cities that we serve in in the six states across the entire system. Those franchises are a way that we do business. It's just -- it's elemental to how we do business. We wanted to make sure that this franchise was as proactive as the last one was. It set forth 20 years ago, we put in that franchise things that really helped to support the office of energy and to address low-income energy issues that were tantamount to the city at that time. This time we're doing things that revolve again, dealing in some cases with the office of sustainability, no longer just the office of energy, and dealing with issues that are important to the city. At the same time as dealing with things that are critical to us. To know how and when and who's going to be responsible, and in what order for doing relocations within the city of Portland. It affects our bottom line, it affects the city's bottom line. My -- I give special kudos to the transportation department, to Don Gardner for working through some issues that were really critical to the transportation department. We appreciate what the energy and sustainable development departments were able to do to come up with new ways to address their concerns, and ours too as we came to agreement. We appreciate what was done with both the areas that were related to environmental issues and how we deal with risk, how we deal with taxes, how we deal with auditing. It was a great opportunity to see the city at work from a business perspective when usually I'm coming before you on some community issue or some other capacity. So it was a great experience, a good opportunity for us to in fact make our relationships even better than they have been in the past and have real clarity when where we can go and how we will proceed in the future. So thank you all for your time this morning, and I want to thank the team for all the work that they did in making this happen. So we're hoping that when it comes 30 days from now, the second read will go a lot faster than this, and we'll get a quick vote. Thank you.

**Saltzman:** Thank you all.

**Potter:** Good to meet you, Mr. Reiten. Congratulations on your position. We look forward to working with you and your company.

**Reiten:** Thank you. I appreciate it.

**Saltzman:** This completes the invited testimony. I don't know --

**Potter:** Has anybody signed up to testify on this matter?

**January 3, 2007**

**Moore:** Stephen edlefsen signed up.

**Potter:** That's it? Ok. It's a nonemergency, moves to a second reading. What is the date of the reading, 30 days?

**Moore:** February 7, 2007.

**Potter:** Thank you. Please read the 10:30 time certain. Whoops. Too early for that. Let's go to the regular agenda. Please read item 25.

**Item 25.**

**Don Gardner, Portland Office of Transportation:** Good morning. Don gardner with the Portland office of transportation. This is an i.g.a. With tri-met that allows for during the calendar year 2007 enhanced security and cleaning on the transit mall. Our concern has been along with tri-met's is when construction begin and we move the buses off the mall, there will be a problem with security because we won't have the normal bus riders on the mall. So to enhance the security also to provide cleaning services on the portions of the mall that are not under construction, and in order to keep activity and local businesses on the mall in a much -- a better state than we think would happen should we move all the riders and the transit stuff, it's a \$500,000 agreement, it's for one calendar year, tri-met is putting up \$480,000 between cash and in-kind services, and what we would do, we will have security hired for both the north, the south, and the central portions of the mall, in addition to the ongoing police presence and the p.b.a.'s presence. We will also hire contractors to clean the mall. One of the concerns that we have is we want to make sure everything stays clean and if there's any construction related debris or dirt, we have somebody who can immediately jump on it to keep it up. This is a one-year agreement. During the next six months we'll negotiate the ongoing how the mall will be maintained. It will be a process that we're going through. The \$500,000 that pdot is putting into it is coming from the parking meter revenues that were raised when we raised the rates and extended the hours, which was to go to the extended mall maintenance. What will happen, we'll put this \$500,000 which we've already collected, since we did this change in rates about a year ago, that will go towards this year, and then anything in the future will go towards our debt service on the -- our contribution towards the mall reconstruction, plus the ongoing maintenance that will occur.

**Potter:** Questions? Thank you, don. Is anybody signed up to testify on this matter?

**Moore:** I did not have a sheet set out.

**Potter:** Is there anybody here that wishes to testify on this matter? It's a nonemergency, and moves to a second reading. Please read item 26.

**Saltzman:** Members of the council, we have before us some really good news. Parks and the Portland development commission are now moving forward on an important project to relocate Portland saturday market. A majority of the market's vendors will be moved to waterfront park under and adjacent to the burnside bridge as well as ankeny plaza. This project comes forward as a result of an extensive 15-month public participation effort in conjunction with the ankeny-bunside development framework, a joint p.d.c. And bureau of planning project. Public participation will now focus on waterfront park and ankeny plaza as we improve these public properties and build space for the market. We do have staff I believe from parks and p.d.c. To quickly explain where we go from here on this exciting project. I don't see anybody here, they were probably assuming this would be later. I assure you it's an exciting project. And they would reiterate that.

**Leonard:** They're out celebrating.

**Potter:** Did we have a sign-up sheet?

**Moore:** We did. Stephen edlefsen.

**Potter:** You have three minutes.

**Stephen Edlefsen:** Stephen edlefsen. I didn't know this before, i'm still even though i've been to several of these meeting, trying to figure out exactly how to coordinate the signing up and the speaking. So sometimes I get on the list when I don't really have anything to say. It is kind of

**January 3, 2007**

exciting. I think it is kind of neat. I imagine more tents and more fun, more people running around and sounds and music and such. And maybe the waterfront park will get fixed. Finished, I mean.

**Potter:** Thank you.

**Potter:** This is a nonemergency and moves to a second reading. Please read item 27.

**Item 27.**

**Potter:** Second reading, vote-only. Please call the vote.

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

**Potter:** Aye. [gavel pounded] we'll be recessed for 15 minutes until 10:30.

[recess]

**Item 4.**

**Potter:** Please read the 10:30 time certain.

**Potter:** Commissioner Saltzman.

**Saltzman:** Thank you, mr. Mayor. I'm happy to introduce this report to recognize the nature in the neighborhoods grant program, sponsored by our regional partner, metro. At the heart of this program is a focus on restoration, conservation, and other innovative ways encouraging residents to protect the natural environment. These grants as we'll hear from counselor rex burkholder, are intended to provide for watershed restoration efforts in urban areas and are available to private property owners, nonprofit community groups, schools, individuals, businesses, and local governments. Sustaining a healthy parks and watershed system makes Portland a great place to live, work, and play, and i'd now like to first of all thank metro, but also town variety up councilor rex burkholder to provide some more background on this program.

\*\*\*\*\*: I think we're also going to hear from some of our city staff.

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

**Rex Burkholder, Metro Councilor:** Good morning, mayor, councillors. Rex burkholder. I'm a metro councillor representing the northern half of the city of Portland on the regional government. I'm here today to give you a little update on the nature in neighborhoods program. It's, as the -- the city of Portland was a partner in developing the program in general, which was our response to a regional response to goal five, the state land use planning goal five, which is to protect natural resource and conserve scenic and historic areas and open spaces. And also metro's 2040 long-range growth plans includes healthy environment as one of the key objectives that we are trying to achieve and maintain. This initiative aligns the region's conservation programs behind a strategic effort to protect clean water and healthy natural areas. It also addresses conservation, education, acquisition, and nature friendly development practices in addition to regulations to protect the highest value habitat in the region. So those are the six major components. The grant program is part of the restoration and enhancement component. It strives to connect participants and citizens through a participatory and collaborative process in protecting their watersheds. It works towards improving watershed health through hands-on activities including removal of invasive plants, planning of native species, storm water improvement projects and environmental education around watershed health for all ages. We had a -- currently we're in the first year after two-year, \$1 million grant program that was provided by excise taxes collected from metro solid waste program, and over the last several years. These grants are available to many people. The idea is to have a matching grant program to bring out ideas and solutions from a wide variety of folks, including private property owners, nonprofit community groups, schools, individuals, businesses as well as local government agencies. As long as a fifth goal of restoring the environment and restoring watersheds in neighborhoods throughout the urban area. During the first round of grants which opened in november 2005, we received more than 80 applications. We rewarded in may of 2006 to 27 groups about \$560,000 for 32 projects. And because these grants require matching funds, the original \$560,000 in grants leveraged \$3.1 million total in funding for restoration programs. And when we hope to see about \$5 million over \$5 million in total investments in this with -- as

**January 3, 2007**

matching to the \$1 million. That we have. Obviously it's not enough. We're here today to give you a status on what we've done so far. Just to make a little announcement too for people who are listening and your agencies are here today, the next round of grants is currently open. We are accepting preapplications by January 18, we have Janelle in the audience, who is our grant manager, and we're -- we have about 370,000 dollars left of that million dollars for work focusing on restoration, conservation, education, and other ways to encourage residents to protect the nature of our region. We want to report on two grants that we are proud to have shared with the city of Portland. We had 13 Portland-based organizations that received funding and two were made either directly to city agencies or to organizations working in collaboration with city agencies. And the two today which you'll hear about are Portland parks and recreation, which received a grant of \$20,000 for the Fanno basin community stewardship project, and Owens Corning, which received \$20,000 towards wise water and wastewater management project. I'm going to turn over to Marissa to describe the Fanno basin project and its actually a collaboration between the bureau of environmental service and a wide range of partners. The goal is to improve watershed health and improve stream reaches in over 22 acres at three sites in the Fanno creek watershed. I'd like to turn it over to Marisa to give you an update.

**Marissa Dorais, Portland Parks and Recreation:** I'm with Portland parks. The Fanno basin community stewardship project combines a pollution prevention and a dog owner campaign with hands-on restoration activities to improve water quality and habitat in the Fanno creek watershed. The project focuses on three major tributaries of Fanno creek -- Vermont creek, Woods creek, and South Ash creek. This is a collaboration between the city of Portland's parks and recreation city nature division and the bureau of environmental services as well as Metro. Other project partners include the Friends of Vermont creek, the Friends of Woods Park, the Friends of Dickinson Park, Miles an Hour Corp and the Boy and Girl Scouts of America. It encourages the use after port-a-potty, for dog waste disposable, removing invasive species, and replanting with native species, providing education on storm water management, improving trail systems to reduce erosion, and encouraging dog owners to keep their dogs on leash and on trails in natural areas. These actions address strategies outlined in the 2005 Portland watershed management plan. Storm water management, revegetation, education, involvement, and stewardship are all strategies included in this innovative project. The three Fanno creek park sites were identified in the 2005 Fanno and Tryon creeks watershed management plan. The Fanno project also continued Portland parks and recreation's efforts to maintain salmon safe certification. In addition, the project fulfills community goals in the 1999 functional plan for Woods Park and the 2000 Dickinson Park plan. Since the nature and nature has grant went into effect in August, 153 volunteers have contributed 632 volunteer hours to the Fanno project. When all work is completed, one half of mile of informal trails will be closed, three-quarters after mile of new trails will be built, more than 20 acres of invasive species will be removed, and over 4,000 native plants will be planted in an effort to increase community stewardship of parks and improve the overall health of the Fanno creek watershed. I'd like to thank Metro and Metro councillors for awarding funding to the project, and I would like to thank the councillors and more than for having me here today. Finally, I have brought along our dogs for the environment pledge and bandana for any visitors or council members with dogs who would like to officially commit to environmentally responsible pet ownership. I'll go ahead and leave those with Karla, council clerk, so people can look over the pledge at their convenience. Thank you.

**Potter:** Do you have any for cats? [laughter]

**Dorais:** We don't have any for cats, but you can pledge your official commitment to being a responsible cat owner as well.

**Saltzman:** I'll certainly take one of those for my dog.



**January 3, 2007**

**Burkholder:** I thought we got to wear them, but I guess not. The Owens Corning grant was made in partner with the environmental services for -- by installing a storm water management system to filter pollutants and planting trees and shrubs to create enhanced habitat.

**Alice Meyers, Bureau of Environmental Services:** My name is Alice Meyers, I work for the bureau of environmental services. We are partnering with Owens Corning on a sustainable storm water management project and water reuse project. And the project involves two elements, one to install a water reuse system to recycle Owens Corning manager process wastewater, and to install vegetative storm water systems on the site to manage storm water from both the roof and the parking lot and direct that water into storm water swales where the water can be cleansed and filtered and infiltrate into the ground. The schedule for this project is it's currently in the design phase and will be complete this summer of 2007. The overall budget for the project is approximately \$165,000, 25 of which came from the nature and neighborhoods grant program, \$40,000 came from the Owens Corning corporate budget and approximately \$100,000 from the b.e.s.-e.p.a. Innovative wet weather grant program for sustainable storm water management. Once complete, this project will save approximately \$40 -- 40,000 gallons per day in drinking water and also will help treat approximately 1.6 million gallons of annual storm water run-off from this site. And currently that water is directed directly to the Willamette river via the city storm system. The project offers a unique opportunity to engage and educate business on sustainable storm water management. It illustrates private and public and community-based forces working together towards sustainability and enhanced watershed health. It's an opportunity to help restore habitat in an area that low on green space, and this project will also serve as a model for other industrial property owners in the area that are interested in these types of techniques that fit well with their industrial practices. Owens Corning and b.e.s. are thankful that Metro was interested in funding this project, and we're very excited about it, and thank you all for your time here today.

**Burkholder:** I want to thank the commissioners, too. Obviously the amount of dollars that Metro puts into these things is small, but they do help leverage. I want to mention, it's not just leveraging dollars, as you heard from the description, and you have a list of other projects that were funded within the city of Portland limits, we're leveraging people, we're leveraging their energy and their concern for the community and the environment, and the numbers of volunteers in each of these, on all the projects, has been significant and also the collaborative relationship with businesses as the Owens Corning grant typifies. I think it's really the heart of this program. If you recall, there was quite a bit of controversy about the idea of establishing a regional goal five regulatory structure a few years ago, and the council decided to, let's look at education encouragement, incentives, and this is a piece of that. I think this is an example that we are succeeding in that. And we are of course committed to monitoring our success in this area, and also continuing this. And I would be remiss if I didn't mention that we do have -- we have purchased the first piece of property with the bond measure that was passed in November. And it happens to be in the city of Portland's boundaries. It's along Johnson Creek. Just down by the bridges on the Spring Water trail. We purchased an acre of land there next to Sellwood Park in that area. For a long-term preservation for the region's citizens. So all these things I think I'm pretty excited, especially after the fall election and the bond passing, and then these kind of projects I think add a lot to the sense of people's ability to make a difference in their community. And I thank you for your participation and support for the city. All of us I think are here to answer questions if you have any.

**Potter:** Questions?

**Saltzman:** I want to thank you. This is a great list, impressive list of grants, and pleased to hear about the first bond measure expenditure in the city limits of Portland. It's great.

**Potter:** Thank you, councilor. And please thank your compatriots back at Metro. We appreciate their efforts.

**Burkholder:** Thank you very much.

**January 3, 2007**

**Potter:** Is there a sign-up sheet?

**Moore:** We have one person signed up, stephen edlefsen.

**Stephen Edlefsen:** My name is stephen edlefsen. I have this report, and I read it over, and I was disappointed. I hoped to read it as it was being presented. It wasn't just the reading of this report. I guess i'm glad what was presented was presented as it was. It was really interesting, and more pictures were drawn and more information was given. I was really excited about the mention of the filters, the natural filters. I presumed them to be something like a bog with plants that are good at taking the pollutants out. And I really am excited about those and such things, and i've known about them for many, many years, and have been reading about them, and the subject, and similar subjects all my life, really. I'm really excited about metro, sort of. Several years ago they got very, very big grants, bought tons and tons of land, and quite a bit of talk was about how they would be setting them aside for nature. And they would be planted with natural plants, plants that are native to the area that it would be made to look as if people hadn't spoiled them. And i'm not hearing such talk these days, and the talk that I come across leads me to believe now they're sort of mired. They're just sort of slugging along in a lot of waste. Maybe that's ok, i'm realizing now. Maybe that's not a problem. Maybe they have the land and it's there, and it's not going away, so they're just working through what to do with it and how to get it done. I really think beavers are neglected. Beavers were here before the easterners came, the people from europe came. And they do a lot to weather. The south waterfront district I believe those buildings, maybe other buildings, I haven't really realized about, draw a lot of moisture from the river, and maybe even the storm system there at the river, the clouds, and draw it into the city and the air. And they make a quality of air -- aerosol that is really uncomfortable, and I think makes weather that is not very native. And the kinds of ponds that beavers make would change that quality and make more periodic weather, better weather for the area. I think it's something that should be invested in that -- so it's really good. Thank you very much.

**Potter:** Is that all that's signed up?

**Moore:** That is.

**Potter:** It's a report, we need a motion to accept the metro's nature of the neighborhoods grant program.

**Leonard:** So moved.

**Saltzman:** Second.

**Potter:** please call the vote.

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

**Sten:** It's a pleasure working with you guys. Good job. Aye.

**Potter:** Aye. [gavel pounded] we're recessed until 2:00 p.m. tomorrow.

At 10:51 a.m., Council recessed.

**January 4, 2007**  
**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.

[ The following text is the byproduct of the closed captioning of this broadcast. The text has not been proofread, and should not be considered a final transcript ] \* \* \* [ roll call ]

**January 4, 2007      2:00 PM**

**Potter:** Prior to offering public testimony to city council, a lobbyist must declare which lobbying entity he or she is authorized to represent. Karla, please read the 2:00 p.m. time certain.

**Item 28.**

**Potter:** The city attorney please describe the hearing process.

**Kathryn Beaumont:** Thank you. Before we begin the hearing, I have several announcements to make that are required by state law. These concern the kind of hearing we're having today, the order of testimony, and the scope of testimony. First this is an on the record hearing. For those testifying, 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. The hearing is designed only to decide if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. As to the order of testimony, we'll begin with a staff report by 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 council. If there is a principle opponent, the principle opponent will have 15 minutes to address the city council and rebut the appellant's presentation. If there is no principle opponent, the council will move directly to testimony for persons who oppose the appeal. After supporters of the appeal conclude their testimony. And 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 then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, the council will set a future date for the adoption of findings and a final vote on the appeal. If the council takes a final vote today, that will conclude the matter before the council. Finally as to scope of testimony. Again, a reminder this is an on the record hearing which means you must 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 that but you may not submit anything new. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the final decision. If you -- address city council today improperly presented evidence or presented a legal argument that relies on evidence not in the record, you may object to that argument. Finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to city council. If you believe another person has raised issues today that were not raised before will the hearings officer, you may object to the council's consideration of that issue. That concludes my opening remarks.

**January 4, 2007**

**Potter:** Any members of council wish to declare a conflict of interest? No council members have a conflict of interest to declare. Do any members of council have any ex parte contacts to declare or information gathered outside of hearing to disclose? No council mechanics have ex parte contacts to declare. Do any members have council have questions or preliminary matters that need to be addressed before we begin the hearing? Staff, could you please come forward?

**John Cole:** My name is John Cole, I'm the b.d.s. Staff planner for this application. As Karla had indicated during the introduction, this is an appeal of a hearings officer denial of the 30-lot subdivision. The appellant is Blue Sky Planning, and they're representing property owners listed on the screen in front of you. The specific approach that was presented to the hearings officer was 30 single dwelling lots on approximately two acres in an R2 multifamily zone. There was a public street segment, two private streets, and a variety of infrastructure improvements associated with this particular land division. I think I would like to mention that the hearings officer concern was limited to one specific component of the application and that was how was the applicant, how was the land division going to dispose of storm water from the private individual lots. The location of this particular property is roughly at the corner of Southeast Foster Road and 136th Avenue in Southeast Portland. The shaded area. Aerial photograph of this particular piece of property shows a blue line outlining this particular application site. I'm about to show you a site plan and the public street segment lines up roughly with the long driveway that you see in front of you. So I had indicated before there's a new public street segment, two private shared courts that run to the east and west, some frontage improvements along Southeast Foster, and then 30 individual lots for detached single family dwellings. When the City of Portland reviews subdivision proposals, there are roughly 14 areas that we take a look at in order to determine that a subdivision would be a positive addition to the neighborhood and to the city. They don't all apply to every specific application, and in this case there were eight criteria of approval that the city staff looked at. As I had mentioned before, the hearings officer and staff and the applicant were in agreement in all of these areas except for the approval criteria that deals with storm water management. So the hearings officer issued a denial indicating that the written record did not adequately address the storm water management approval criteria. I've listed that specific criteria in italics in the screen in front of you. I know there's a lot of particulars on the screen here. The hearings officer got a little more specific on page 13 of their particular decision, and they indicated that they did not feel that the applicant had responded to some earlier concerns of the Bureau of Environmental Services relating to how the storm water from the individual private lots would be managed. The applicant has appealed that particular ruling. They've indicated that in the course of their application, they received a building code appeal that resolved problems related to some of the private shared courts, and that they were going to direct storm water from lots one through 30 to individual dry wells, that that particular course of action meets the storm water manual and meets the Bureau of Environmental Services concerns. At this point I'd like to also indicate that staff had recommended approval of this particular application. Initially when the applicant submitted their application package, staff did have some concerns regarding a number of items related to the application. The hearings officer at the public hearing on this item on September 25 left the record open for a little over a month to allow the applicant and staff to resolve some of the outstanding issues at that particular date. We did have meetings with the applicant in that intervening period of time, and did reach what we believe was an agreement on a storm water management system that would serve both the public streets, the two shared courts which are private streets, and the individual lots. And I attempted to write a memo that put that agreement in writing for the hearings officer to consider. In retrospect, when I take a look at the particular written record that the hearings officer had to make their decision on, I can appreciate where not having the benefit of attending some of those individual meetings between staff and the applicants that I was not clear in my writing as a staff member, but as we attend the hearing here today, I would let you know that staff is in agreement

**January 4, 2007**

with the appellant, if you will, indicating that we do believe that this particular land division application has submitted a preliminary storm water management plan that does meet the criteria established in the city code, and that there are items in the written record that do support that subject to clarification at today's meeting. The storm water management plan that has been reviewed by staff takes the storm water from the public streets and directs it to infiltration planters that are located within the right of way. These will be swales or planters between the sidewalk and the curb, and the storm water from that public street will flow to that particular facility. The shared courts and a private driveway easement that cars will travel over but are privately owned will be constructed from a pervious paving facility and storm water on that particular driveway, if you will, will percolate directly into the ground. Development on the private lots, the placement of the houses on lots 1-30, storm water from the roofs of those particular structures will be directed to individual drywalls on each particular piece of property. As I make that comment to you here today, I do note that colleen herald, a representative from the bureau of environmental services, is here in the audience as well as mike hiakawa from the site development section of the bureau of development services are in the audience in case you have any questions. I've conferred with them before I made this particular assertion to you today. So i've listed a few items within the public record that do in my opinion, indicate that the applicant has proposed this preliminary storm water management plan, and that it can be approved. So it's our recommendation to the city council today that with a clarification that the fundamental storm water approach for this particular project is as I have outlined briefly for you today, that you may overturn the hearings officer denial of this particular proposal tentatively approve the application, and direct staff to prepare the findings of fact and conditions to support a final city council decision. I've covered a number of points here fairly quickly, and I would be happy to answer any questions that you may have.

**Leonard:** I just want to clarify for myself the chronology of what you have described with respect to the hearings officer's hearing, and then the subsequent memo you wrote, which unfortunately I don't have a copy of, but is referred to in blue sky planning's appeal. So just specifically, I see that the hearings officer in simpson signed the report on november 15. Signed the decision on november 15. Did you say that the record was open 30 days after that, and it was in that time period you submitted --

**Cole:** No, commissioner Leonard. The hearings officer held a public hearing on september 25. At that point they held the record open until november 6. And then wrote their report based on the written materials in the record at that time.

**Leonard:** So between the public hearing on september 25 and november 6, you submitted a report?

**Cole:** I did. I wrote a supplement that was dated october 30.

**Leonard:** Did I understand you correctly that you think that the hearings officer misunderstood what you were writing in the report, and upon that came to a conclusion that --

**Cole:** Yes.

**Leonard:** You don't think he should have?

**Cole:** That's correct.

**Leonard:** Is there some opportunity, this is more of rah procedural question, is there some opportunity to revisit that with the hearings officer to affirm that there was a misunderstanding?

**Cole:** I've had a couple of discussions with the hearings officer since that time, including an inquiry as to whether or not he could consider the omission to be something akin to a clerical error and could issue a -- he indicated that if there was a specific sentence or a specific exhibit within the public record that I could point to and say was incorrect, that in rare circumstances he's gone back and issued amended decisions after a renotification. In this particular case he did indicate that he had looked fairly carefully through the written public record and could not see that the response --

**January 4, 2007**

he could not see where the criteria for addressing storm water was specifically addressed, so he felt uncomfortable opening the record in that particular case.

**Leonard:** Just beyond that, is what you're saying that you think the issues he specifically raised for the denial in his decision have been positively addressed by the applicant?

**Cole:** Yes.

**Potter:** That's within the existing record?

**Cole:** Yes. I agree, i'm not here to criticize a hearings officer, when I spoke with him I had gone back and looked through the written record, and without the benefit that I have of particularly sitting in on some of the meetings that i've held with b.e.s. Staff and site development staff and the applicant's engineers, I can see where a person knew to the particular record would not pick up on the items in the public record. I do think the information is there for a person who understands the case to review and come to the conclusions that staff does.

**Potter:** Was that procedure or future procedures corrected so that that doesn't happen again?

**Cole:** I'm certainly going to be looking at my staff reports a little bit closer when we're making these provisions.

**Potter:** Further questions? Thank you. The applicant has 15 minutes.

**Mark Dane:** Good afternoon. My name is mark dane, i'm the principal of blue sky planning of beaverton. I'm here today primarily -- unfortunately because a decision was issued by the hearings officer that was completely unexpected by staff, by the applicant. There was no opposition to this project whatsoever. There is no opposition today. The basis we discovered of the hearings officer's decision was an item buried deep in the initial comments provided to staff in their report prior to any meeting, any discussion, any consequence -- consequent resolution of those issues, and the item that was picked up on was simply overlooked. It was not an item that was seen to be an issue. In fact, all storm water issues were resolved. The item upon which the appeal was based was singular, which was there was not enough room to provide a sump on individual lots to handle the storm water. That has been shown in the facts that that can be accomplished. But the original comment which was done way back at the beginning was not corrected, and the hearings officer picked up on that and made his decision based on that as opposed to subsequent information that was provided. We therefore had to appeal the decision, we hope we didn't, we thought there could be just clarified.

We think this primarily as a housekeeping issue. We would like to request the hearings officer's decision be overturned because of the one item. We feel we're justified. The staff members who wrote the initial comments and the staff members who were involved in the subsequent meetings and the staff members who basically affirmed we were doing the right thing and there was enough evidence are here today. And we would request therefore that the appeal be overturned and if possible that our fee be returned to us. And that's pretty much it. If you have any questions, i'd be happy to answer them.

**Saltzman:** One question. You're using pervious pavement for the private road part of your proposed development?

**Dane:** Yes.

**Potter:** Is the pervious pavement the bioswale.

**Dane:** No. I can go into more detail if you wish.

**Saltzman:** I'm just glad to hear that.

**Leonard:** It's a good product.

**Potter:** Further questions? Thank you, sir. Since these folks are both the appellant and the applicant, is there anyone who supports the appeal who wishes to speak? Any person who opposes the appeal? Ok. Normally we provide a chance for the rebuttal for you folks. Do you wish to use that time? Ok. So council deliberations.

**January 4, 2007**

**Leonard:** I move to overturn the hearings officer appeal -- I do have a question. He made a comment about fees. I'm not familiar with that aspect of overturning an appeal that would refund fees. Can you explain that?

**Cole:** Commissioner Leonard, I would let you know that there was an appeal fee --

**Leonard:** Speaking of the fee to appeal that decision?

**Cole:** That's correct, to come to this particular body. I don't have an opinion as to whether or not that --

**Leonard:** How much is that, do you know?

**Cole:** It was \$5,000, in that neighborhood, half the original application fee.

**Leonard:** And just so i'm understanding completely, your position is that had our report to the hearings officer been more clear that the hearings officer would not have denied the application?

**Cole:** That's correct. I'd add to that that if the application was clear, we would not be here today either. So I think there's some shared fault, if you will.

**Leonard:** Ok.

**Leonard:** I would move to overturn the hearings officer's decision consistent with the staff recommendation we heard here today, and to refund the \$5,000 appeal fee.

**Saltzman:** Second.

**Potter:** Discussion?

**Sten:** I'm unconvinced of refunding the fee, since it was a mutual problem.

**Potter:** How about sharing it?

**Leonard:** If I could maybe speak to that point, given that I have responsibilities for that bureau, we work really hard not to even be at the place where we can suggest there is shared responsibility. We try to make sure that each time we do a really good job, i'm not criticizing what happened, but if there is some issue with what we did, we routinely refund fees.

**Sten:** If you think that's consistent with your practice, I don't have a problem with it. My concern was starting a new policy where we decide that on the fly at this level. I think we need to be consistent when we --

**Leonard:** I think it is. We have done similar things in the past.

**Sten:** Ok. Then that's fine with me.

**Potter:** Other questions? Call the vote.

**Leonard:** I really appreciate the report from staff today. It was very candid and helpful, and helping us get to a quick decision. Aye.

**Saltzman:** Aye.

**Sten:** Aye.

**Potter:** I'm going to vote aye as well. But obviously if we get another one of these it will be a much slower vote.

**Leonard:** We won't.

**Potter:** I vote aye. [gavel pounded] we're adjourned.

**Moore:** We need to pick a new date.

**Beaumont:** We need to set a date to bring this back for adoption of findings. They would have been a tentative vote since you're overturning the hearings officer.

**Moore:** Do you want to go to january --

**Leonard:** Can we do it on a regular wednesday agenda?

**Moore:** We've got -- do we need a time certain for that? We have a morning available on the 17th. For time certain if we need a time certain for this.

**Beaumont:** I think regular agenda will be fine.

**Moore:** Why don't we say the regular agenda on january 17.

**Beaumont:** Which could clarify would be a 9:30 a.m. agenda.

**Moore:** Start time, m-hmm.

**January 4, 2007**

**Potter:** Ok. We're adjourned. [gavel pounded]

At 2:34 p.m., Council adjourned.