



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **28TH DAY OF FEBRUARY, 2007** AT 9:30 A.M.

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

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

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

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<p><b>166</b> Request of Eileen Stocker to address Council regarding limiting adult entertainment venues in neighborhoods (Communication)</p>	<b>PLACED ON FILE</b>
<b>TIME CERTAINS</b>	
<p><b>167 TIME CERTAIN: 9:30 AM</b> – Create a local improvement district to construct street and bridge improvements from the Columbia Slough to Alderwood Road in the NE 92<sup>nd</sup> Drive Local Improvement District (Hearing; Ordinance introduced by Commissioner Adams; C-10020)</p> <p><b>Motion to accept amendment to as stated in Memorandum dated February 28, 2007 to add to Finding No. 5:</b> Moved by Commissioner Adams and seconded by Commissioner Saltzman. (Y-5)</p> <p><b>Motion to accept amendment to change “owners’ share” to “property owners’ share” in Directive “b”:</b> Moved by Commissioner Adams and seconded by Commissioner Saltzman. (Y-5)</p> <p><b>Motion to replace Exhibit C with a map of the remonstrances, to replace Exhibit F which evaluates the level of remonstrances, takes it from 0-17.7%, and Exhibit H is replaced to incorporate the remonstrances:</b> Moved by Commissioner Adams and seconded by Commissioner Leonard. (Y-5)</p> <p><b>To be rescheduled to March 28, 2007 at 2:00 pm Time Certain</b></p>	<p><b>CONTINUED TO          MARCH 14, 2007          AT 10:45 AM          TIME CERTAIN          AS AMENDED</b></p>
<p><b>168 TIME CERTAIN: 10:15 AM</b> – Amend the Transportation System Plan and Comprehensive Plan to ensure that the documents remain current and to incorporate new policy language relating to green streets (Ordinance introduced by Commissioner Adams)</p>	<p><b>CONTINUED TO          MARCH 29, 2007          AT 2:45 pm          TIME CERTAIN</b></p>
<b>CONSENT AGENDA – NO DISCUSSION</b>	

**February 28, 2007**

<p><b>169</b> Authorize Office of Sustainable Development to enter into grant agreements to fund organizations that install or convert retail and fleet fueling infrastructure to provide high blends of biofuels (Ordinance introduced by Commissioners Leonard and Saltzman)</p> <p>(Y-5)</p>	<p align="center"><b>180778</b></p>
<p align="center"><b>Mayor Tom Potter</b></p>	
<p><b>170</b> Appoint Richard Michaelson to the Development Review Advisory Committee for a term to expire December 31, 2009 (Report)</p> <p>(Y-5)</p>	<p align="center"><b>CONFIRMED</b></p>
<p align="center"><b>City Attorney</b></p>	
<p><b>*171</b> Extend contract with Cable Huston Benedict Haagensen &amp; Lloyd LLP for outside legal counsel (Ordinance; amend Contract No. 36726)</p> <p>(Y-5)</p>	<p align="center"><b>180779</b></p>
<p><b>172</b> Authorize an Intergovernmental Agreement with Multnomah County Department of Community Justice for the Partnership of Police and Parole/Probation to monitor and support high risk offenders (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p align="center"><b>Commissioner Sam Adams</b></p>	
<p align="center"><b>Bureau of Environmental Services</b></p>	
<p><b>*173</b> Authorize the Bureau of Environmental Services to acquire certain permanent and temporary easements necessary for construction of the East Side Combined Sewer Overflow Tunnel Project through the exercise of the City Eminent Domain Authority (Ordinance)</p> <p>(Y-5)</p>	<p align="center"><b>180780</b></p>
<p><b>*174</b> Authorize a contract with the lowest responsible bidder for construction of the Co-Generation project at the Columbia Boulevard Wastewater Treatment Plant Project No. 7382 (Ordinance)</p> <p>(Y-5)</p>	<p align="center"><b>180781</b></p>
<p><b>175</b> Authorize a contract and provide for payment for construction of the Dry Weather Primary Clarifier Expansion project at the Columbia Boulevard Wastewater Treatment Plant Project No. 6905 (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p><b>176</b> Authorize an Intergovernmental Agreement with the City of Lake Oswego to jointly fund and participate in the development of an enhancement plan for the Tryon Creek Wastewater Treatment Plant Project No. 8484 (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p><b>177</b> Authorize an Intergovernmental Agreement with the City of St. Helens to provide Laboratory Analytical Services (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>

**February 28, 2007**

<p><b>178</b> Authorize low-interest State Revolving Fund loan agreement with Oregon Department of Environmental Quality for \$100,000 for work in Johnson Creek Watershed (Second Reading Agenda 150)</p> <p>(Y-5)</p>	<p align="center"><b>180782</b></p>
<p><b>179</b> Authorize a formal bidding process and contracts to be executed for the NW Glisan Street, between NW 11th and NW 15th Ave, Sewer Replacement Project No. 8333 (Second Reading Agenda 151)</p> <p>(Y-5)</p>	<p align="center"><b>180783</b></p>
<p align="center"><b>Office of Transportation</b></p>	
<p><b>*180</b> Authorize the Portland Office of Transportation to acquire certain permanent and temporary easements necessary for construction of the 84th/Foster/Ellis Project through the exercise of the City Eminent Domain Authority (Ordinance)</p> <p>(Y-5)</p>	<p align="center"><b>180784</b></p>
<p align="center"><b>Commissioner Dan Saltzman</b></p>	
<p align="center"><b>Office of Sustainable Development</b></p>	
<p><b>181</b> Authorize an Intergovernmental Agreement with Portland State University in the amount of \$86,326 to execute the Single Family Weight Study Recycling Project (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p align="center"><b>Parks and Recreation</b></p>	
<p><b>182</b> Amend contract with SERA Architects for an aquatics addition to East Portland Community Center (Ordinance; amend Contract No. 35980)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p><b>183</b> Amend Intergovernmental Agreement with Oregon Department of Transportation for Springwater Corridor Three Bridges improvement project (Second Reading Agenda 153; amend Contract No. 51912)</p> <p>(Y-5)</p>	<p align="center"><b>180785</b></p>
<p><b>184</b> Authorize a Submerged and Submersible Land Lease with the Department of State Lands for a portion of the Willamette River adjacent to Gov. Tom McCall Waterfront Park (Second Reading Agenda 154)</p> <p>(Y-5)</p>	<p align="center"><b>180786</b></p>
<p align="center"><b>Commissioner Erik Sten</b></p>	
<p align="center"><b>Fire and Rescue</b></p>	
<p><b>185</b> Apply for a \$463,152 grant from the Department of Homeland Security for Portland Fire &amp; Rescue for the Safe &amp; Sound media campaign and to purchase items for the Learning Center (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>

**February 28, 2007**

<p><b>186</b> Accept donation of pet oxygen masks from the Jeff Morris Fire &amp; Life Safety Foundation (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>
<p><b>City Auditor Gary Blackmer</b></p>	
<p><b>*187</b> Assess property for system development charge contracts and private plumbing loan contracts (Ordinance; Z0761, K0090, T0102, K0091, T0104, P0076)  (Y-5)</p>	<p align="center"><b>180787</b></p>
<p><b>REGULAR AGENDA</b></p>	
<p><b>188</b> Accept proposal of Oregon Iron Works, Inc. to furnish a prototype streetcar for the Office of Transportation for \$3,200,000 (Purchasing Report - RFP No. 105620)  <b>Motion to accept Report:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman.  (Y-5)</p>	<p align="center"><b>ACCEPTED PREPARE CONTRACT</b></p>
<p><b>189</b> Request the United States Congress and the President to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000 in 2007 (Resolution introduced by Mayor Potter and Commissioner Saltzman)  (Y-5)</p>	<p align="center"><b>36484</b></p>
<p><b>190</b> Urge the United States Congress to pass binding legislation that pursues diplomatic, non-military solutions to the problems that have developed in Iraq (Resolution introduced by Mayor Potter and Commissioners Adams, Leonard, Saltzman and Sten)  <b>Motion to add Commissioners Adams and Saltzman to the Resolution:</b> Moved by Commissioner Leonard and gavelled down by Mayor Potter after no objections.  <b>Motion to add the language “WHEREAS, The Council previously adopted and affirms Resolution No. 36459:</b> Moved by Commissioner Sten and seconded by Commissioner Leonard. (Y-5)  (Y-5)</p>	<p align="center"><b>36485 AS AMENDED</b></p>

**February 28, 2007**

<p><b>S-191</b> Authorize the Office of Government Relations to support and propose amendments to Oregon Senate Bill 400 or any similar legislation which enhances the collective bargaining rights of public safety personnel by allowing them to bargain issues exclusively related to their safety (Previous Agenda 156; Resolution introduced by Mayor Potter, Commissioners Leonard and Sten)</p> <p><b>Motion to set the item over to Thursday, March 1, 2007 at 2:00 p. m.:</b> Moved by Commissioner Leonard and gaveled down by Mayor Potter after no objections.</p> <p><b>CONTINUED TO MARCH 1, 2007 AT 2:00 PM</b></p> <p><b>Motion to accept Substitute Resolution:</b> Moved by Commissioner Leonard and seconded by Commissioner Sten. (Y-4)</p> <p>(Y-4; Adams absent)</p>	<p align="center">SUBSTITUTE <b>36487</b></p>
<p align="center"><b>Mayor Tom Potter</b></p> <p align="center"><b>Office of Management and Finance – Financial Services</b></p> <p><b>192</b> Authorize revenue bonds to finance the Enterprise Business Solution Project (Second Reading Agenda 159)</p> <p>(Y-5)</p>	<p align="center"><b>180789</b></p>
<p align="center"><b>Commissioner Sam Adams</b></p> <p align="center"><b>Office of Transportation</b></p> <p><b>*193</b> Authorize contract with Oregon Iron Works, Inc. to provide a prototype streetcar vehicle compatible with the existing fleet of the Portland Streetcar system (Ordinance)</p> <p>(Y-5)</p>	<p align="center"><b>180788</b></p>
<p><b>194</b> Support the Portland to Milwaukie Light Rail Project and the Portland Streetcar Loop Project and seek funding commitments from the Oregon State Legislature (Previous Agenda 160)</p>	<p align="center"><b>REFERRED TO COMMISSIONER OF PUBLIC UTILITIES</b></p>
<p align="center"><b>Commissioner Dan Saltzman</b></p> <p align="center"><b>Office of Sustainable Development</b></p> <p><b>195</b> Review the City franchise system for collecting solid waste, recycling and yard debris (Resolution)</p> <p>(Y-5)</p>	<p align="center"><b>36486</b></p>
<p><b>196</b> Consent to transfer of Alberta Sanitary Service Inc. residential solid waste and recycling collection franchise to Portland Disposal and Recycling Service, Inc. (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b></p>

**February 28, 2007**

<b>Parks and Recreation</b>	
<b>197</b> Authorize Park System Development Charge grants for funding capacity to increase improvements to City botanic gardens (Ordinance)	<b>PASSED TO SECOND READING MARCH 7, 2007 AT 9:30 AM</b>

At 11:17 a.m., Council recessed.

February 28, 2007

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**WEDNESDAY, 2:00 PM, FEBRUARY 28, 2007**

**DUE TO LACK OF AN AGENDA  
THERE WAS NO MEETING**

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**March 1, 2007**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **1ST DAY OF MARCH, 2007** AT 2:00 P.M.

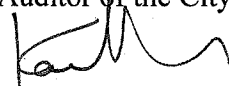
THOSE PRESENT WERE: Mayor Potter, Presiding; Commissioners Leonard,  
Saltzman and Sten, 4.

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

<p><b>198</b>    <b>TIME CERTAIN: 2:00 PM</b> – Accept Staff Report and Recommendation and Order of Council for Gary Dye, Measure 37 Claim (Report; Claim PR No. 06-181326)</p> <p><b>Motion to uphold Staff Report, deny claim and waive the fee on Environmental Review to continue to work towards a compromise:</b> Moved by Commissioner Sten and seconded by Commissioner Leonard.</p> <p>(Y-4)</p>	<p><b>Disposition:</b></p> <p><b>STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED</b></p>
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At 3:10 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.



**February 28, 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 ] \* \* \*

**FEBRUARY 28, 2007            9:30 AM**

**Potter:** Normally we have young folks come to talk to us about youth and children affecting us in this city of ours. This morning because most of the schools are running late because of the snow, we're not going to have the young people, but we would have had four young people from St. Francis Academy come in and talk to us. They are doing a project on the city, so I assume they'll probably be back in the future to talk with us. So we're going to begin the regular portion of our city council meeting. [gavel pounded] council will come to order. Please call the roll. [roll call]

**Potter:** Prior to offering public testimony to city council, a lobbyist must declare which lobbying entity he or she is authorized to represent. We begin with communications. Please read the communication.

**Item 166.**

**Potter:** When you speak, state your name for the record. If you have anything to give out to us, please give it to the council.

**Eileen Stocker:** My name is Eileen Stocker, I own Steamers restaurant. Today I am here to ask the mayor and councilman members to set limit and have controls in place for strip clubs, massage parlors, sex toy and video porn shops. Set limits, how many is too many for our area, or any area in northeast Portland. There are some just down the street or in fact right next to schools. Licensing and health department inspections, that include background checks on all owners, especially those that are money lenders of the establishments. After all these -- after all, these are risky businesses for any area of town because of the clientele they bring in. I am sure that you will agree that it should be regulated and because of the lap dancing simulating sex that is permitted by the Oregon state supreme court, the health department should make regular inspections. Lap dancing brings the industry pretty close to prostitution. Now for the cure. Neighborhood involvement, let the neighborhood and business associations have a say about what is right for their areas. Our neighbors feel powerless against an onslaught of porn activity. Unless you give them a voice to be heard. Set up a citizen group from the local neighborhood and business associations to work with the council to help regulate this industry. Education, some education for schools, parents, and especially the children of the area on how to avoid entrapment into this existence. An existence that robs them of happiness in a normal life to be exploited by adults. Perhaps the council could allocate money from the budget to pay for this education, or a syntax could be able -- would be able to support such a program. I am concerned because the Sandy Corridor has a history of problems regarding this for many years now. Unless we regulate it, it will always be a problem. We need to set limits. Our neighbors are being affected by this growing cancer. Last year a lingerie model shop opened near the Parkrose hardware store. We hear the property that used to house the glass company is going to be a strip club. What can we do? What kind of rights do we have, anyway? As citizen and business owners it is our responsibility to make sure that our neighborhoods are livable for families, we offer services to them and should respect the people we serve so they want to be a part of the community with us. If we as adults find it difficult to deal with this activity in our own

**February 28, 2007**

neighborhood, just think how it must be for a child. Children should be free to grow up without these added pressures. This can't be part of your vision for us. I know you more for the people who live in the city you serve. I would like to see our neighborhood with people walking down the street, children on roller skates and riding bikes. When can it happen, and why not now? There is also something else in our past that disturbs me, allowing a child of 14 to strip in a juice bar as long as they are emancipated. Come on, what 14-year-old can make a decision of this magnitude on their own? Only children that have been introduced to abuse, drugs, and a major let-down in their young lives. Why can't we be there to make their lives better with help in social skills and job training so they can get off to a good start, direct them to the right road, one that leads to happiness and a life of fulfillment? I would hope the mayor and council members would do all they can to ensure each citizen, especially children, are protected, and not preyed upon by adult drug dealers, johns, that are out to exploit them and ruin their chance for a normal life. I want to thank you in advance for working to help us in our effort to control this activity for the sandy boulevard corridor and all neighborhoods in Portland. It may be our past but it does not have to continue to be our future. Thank you for extending the prostitution and drug-free zone. We have a vision too that children should be children for as long as they can.

**Leonard:** Before you leave, this is an area that I have spent time focusing on in the past, and as you pointed out in your testimony, the state supreme court has given some sanction to these kinds of businesses under the provision of the Oregon constitution's free speech amendment. And a number of times. These are free speech establishments. So when I was in the Oregon senate in 1995, I helped craft language that was a constitutional amendment that was referred to the voters that gave the powers that amended the free speech provision that gave powers to local governments to regulate, just as you've outlined exactly what you've said here, it would have given local governments the authority to regulate just in the manner you correctly point out should be done. The voters rejected it, over 82% voted no. And it was that really -- it was the narrowest, I don't know how much you know about my background, but i'm careful about protecting free speech rights. It was the narrowest possible amendment to just strictly allow us to do just what you've said, regulate them, zone them better than what they are, and the voters turned it down. Nearly unanimously.

**Stocker:** How was it worded? Perhaps they were afraid were you going to be able to regulate everything?

**Leonard:** No. That was exactly my concern. That's why I helped craft it.

**Stocker:** May I have a copy of that?

**Leonard:** Yes. It was a ballot measure in 1996. Measure 11. In 1996. A statewide ballot measure. You can access on the secretary of state's website the language. I would be happy to work with you if you had another idea.

**Stocker:** I do.

**Leonard:** I agree, I think most of us agree totally with your concerns.

**Adams:** Absolutely.

**Potter:** As commissioner in charge of the neighborhoods, i'd like to set up a meeting with you, the neighborhoods, and the businesses out there.

**Stocker:** That would be wonderful.

**Potter:** And i'll come out and meet with you folks. So we have --

**Stocker:** When would you like to do that?

**Potter:** We have your number and we'll call and you make those arrangements. [laughter]

**Stocker:** Thank you very much.

**Leonard:** You got good energy. [applause]

**February 28, 2007**

**Potter:** Thanks, folks, for being here. That's the only one on the communications. We'll move to consent agenda. Do any council members wish to pull any items from the consent agenda? Does anybody in this room wish to pull anybody from the consent agenda? Please call the vote.

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

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

**Item 167.**

**Adams:** Thank you, mayor. I think we're going to hear first from Andrew.

**Andrew Aebi:** Good morning council members, Andrew Aebi. Please bear with me, we have a fair amount of detail to cover and we do have some housekeeping items such as amendments to handle, but I'll try to get through this quickly for you. Karla, if we could go ahead and switch to the presentation. This agenda item follows up for the resolution of intent for this I.I.D. That was approved on January 31 with me and Allan Snuck, he was a traffic planner on this project. And he was here on January 31, and also with me is Chief Edwards from the Bureau of Fire, Rescue, and Emergency Services. Just a quick reminder of the project scope. We're seeking council approval to upgrade the existing bridge over the Columbia Slough, extend Northeast 92nd Drive North to Alderwood Road, to provide new multiple access points for property, both north and south of the Columbia Slough, and also add a right turn lane from Alderwood Road eastbound to 92nd Drive southbound. This is a map of the I.I.D. It shows the level of remonstrances. The properties that did not remonstrate against formation of the I.I.D. are shown in green on this map. As you can see, most properties did not remonstrate against formation of the I.I.D. However, all of the remonstrances that were received came from properties south of the Columbia Slough. One thing I would just like to note for the record, some of the remonstrances have dates stamped on them after the 5:00 p.m., February 21 deadline. I made an administrative finding that those were timely because the envelope had been stamped with the February 21 date, and then the letter inside got stamped with a February 22 date. Just to briefly recall the I.I.D., council accepted petitions on January 31, the petitions represented 63.8% of the estimated cost of the project. We did achieve majority petition support for the project. We had 100% petition support north of the slough, and less than 100% petition support south of the slough. We're now proposing to change the project scope and the assessment methodology. We feel very good about the value engineering that we've done to bring down the cost of the project. The level of remonstrances is at 17.7% of the assessable area, and they tended to be from the properties with the higher assessments. So those remonstrances represented 31.2% of the estimated cost of the I.I.D. The 17.7% of area that remonstrated is significantly below the 60% of area threshold at which the formation of the I.I.D. would automatically be defeated and council would not have the prerogative to form the I.I.D. My recommendation to council is to overrule the remonstrance and to form the I.I.D. at the second reading of this ordinance. At this point I would ask to move a motion to amend the ordinance to do two things. One is, I've had several property owners express an interest in making some frontage improvements to their private property and potentially incorporating that as extra work in the I.I.D., strictly at their own expense. So I'd like to amend the ordinance to provide for that flexibility. Again, all of those costs would be paid for. So if the property owner wanted to bring their frontage up to abutting standards they could add that to the project, we'd fold it into the construction contract for economies of scale. The second and more major amendment is to incorporate the remonstrances because the ordinance that you have before you does not actually have the remonstrances. So why don't I hand out the amendment to Karla. I don't know if you want to move that motion now or do you want to do it later. At some point we should do that.

**Adams:** So moved.

**Saltzman:** Second.

**Harry Auerbach:** Are you substituting the whole ordinance, Andrew?

**February 28, 2007**

**Aebi:** We're not substituting the whole ordinance, we're substituting the provisions that document the level of remonstrances.

**Auerbach:** I think you need two separate amendments if you're going to do that. You need to make one amendment.

**Potter:** What's the first one?

**Aebi:** The first amendment -- well -- in terms of the ordinance itself, the first amendment is to go ahead and add several sentences at the end of finding number five. I'll read additional work outside the project limits but within the boundaries may be included in the scope of the l.i.d. at the request of the benefiting property owner or property owners, provided that all cost of the work are also paid by the benefiting property owner. These costs for frontage improvements to bring frontage to city standards would be over and above the property or property assessments for project costs as shown in exhibit f. So should we go ahead and move that first amendment now?

**Potter:** Let's move the first one. Commissioner Adams moved and did you second? Please call the vote.

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

**Potter:** Aye. [gavel pounded] please read the second one.

**Aebi:** Ok. The second amendment is really minor. I just left out an adjective in a sentence. In directive b I wanted to change owners share to the property owners' share. If you want to call a roll call on that.

**Potter:** Do I hear a motion?

**Adams:** So moved.

**Saltzman:** Seconded.

**Potter:** Please call the vote.

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

**Potter:** Aye. [gavel pounded]

**Aebi:** And then the second major piece of this is to replace exhibit c with a map of the remonstrances, to replace exhibit f which evaluate the level of remonstrances, takes it from 0-17.7%, and exhibit h gets replaced to incorporate the remonstrances. So if we want to go ahead and do a roll call on that, we can get that done as well.

\*\*\*\*\*: Those are all related to the same thing.

**Potter:** Do I hear a motion?

**Adams:** So moved.

**Leonard:** Second.

**Potter:** Call the vote.

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

**Potter:** Aye. [gavel pounded]

**Aebi:** Thank you for your patience on that. Several property owners have inquired as to the feasibility of potentially expanding the l.i.d. boundary to spread the cost among a larger number of property owners. Obviously any new property owners have obviously not been included in project communication to date and would not know that they would be added to the l.i.d. Allan from d.k.s. and associates performed the traffic analysis for this project. Given that his finding that the current l.i.d. boundary will be very efficient at aperturing special benefits, no changes to the l.i.d. boundary are recommended. It is estimated that the cut-through traffic that both originates and terminates outside the l.i.d. will be very small, i.e. in the single digit percentages. Nearly all traffic using the new local improvement is expected to originate and/or terminate within the l.i.d. boundary. Do you want to add anything to that?

**Alan Snook:** I would like to. As -- alan snook. As andrew mentioned, the percentage of potential cut-through traffic that is originating or destined outside of the l.i.d. area is actually very low. It's

**February 28, 2007**

1% or lower. So because of the unique nature and location of the project itself, it does specifically benefit the properties within the l.i.d. boundary.

**Aebi:** Here's an overview of the project area. You can see the single existing access point shown south of the columbia slough in red and the multiple access points north of the columbia slough shown in green. So most of my comments today are tailored to properties south of the slough because that's where all the remonstrances came from. By providing this bridge connection, the property south of the slough will have all these means of ingress and egress into the area. The project area is shown in blue. Of the two freeway interchanges nearest to the l.i.d., the killingsworth-sandy interchange is the most congested. The east columbia-to-lombard connector project currently under construction to the west of this photo and south of the l.i.d. boundary will mitigate, congest and on columbia boulevard west of i-205, but not at this interchange per se. Several property owners asked, why don't we just wait and decide whether to form this l.i.d. and see how the east end connector project pans out when construction is complete? So the eastbound connector project is not going to follow this congestion problem that you see here at this interchange. Do you want to talk about the level of service at this interchange?

**Snook:** As andrew mentioned, the killingsworth-sandy interchange area for 205, the changes we're talking about are the airport way interchange, north at 205, and the killingsworth-sandy interchange to the south. It really has about twice as much congestion as far as average potential delay than the airport way intersection. There's usually an average of a minute of delay at the southern interchange, where there's only about 30 seconds of potential delay up at the two intersections at the airport way. And the project really benefits travel and access to the north, because it's providing ingress and egress to the north. It's providing additional travel routes to the north and to the east along airport way, along 205 to the north, and also out along sandy by providing this connection up to alderwood, which then crosses under 205. You can get to both airport way, 205, and down to sandy.

**Aebi:** And if Karla, if we, dim the lights, i'll quickly run through the next couple. This is a picture of the other freeway interchange that alan mentioned, the airport way interchange. Though it's congested, as you can see in this photo, it's more intermittent at this interchange as opposed to killingsworth-sandy, which has more congestion throughout the day.

**Potter:** You may want to put that one up on the screen. Ok. Please go ahead.

**Aebi:** Ok. The port of Portland, as part of the traffic mitigation for the cascade station plan district, is committed to funding \$8 million towards improving access to interstate 205 northbound from airport way. This \$8 million is over and above their l.i.d. Assessment for this l.i.d. And neither the final design nor the final budget for the interchange improvement at airport way has been finalized, but odot has a project team in place and has selected a consult firm to finalize the design and budget of this project. These improvements at airport way to 205 northbound would not be funded by the l.i.d. And when complete, should further improve the already existing level of service superiority that airport way has over killingsworth-sandy. Without council approval, however, this l.i.d. property south of the columbia slough would have a very circuitous route on this interchange.

**Leonard:** Was that commissioner Adams on the overpass waving at people? [laughter]

**Adams:** Maybe. No.

**Aebi:** Then the last photo I wanted to show you this, is northwest alderwood road looking east approaching 105th. Please bear with me, but streets get renamed a fair amount in Portland, and some of you may know this is park who man, so it gets confusing. This has all been renamed as alderwood. This connection underneath i-205 is between those two interchanges, between killingsworth, sandy, and airport way. Obviously as you can see from this photo, eliminate interstate 205 is eliminated. A truck has already found this route to be a good bypass to the congestion. Absent approval of this l.i.d. property south of the columbia slough -- so here's just a quick wrap-up as we discussed last month. This project takes advantage of an opportunity to

**February 28, 2007**

upgrade the existing bridge instead of replacing it all together. I know that the city bridge engineer has some concerns about the approaches to that bridge and that bridge was there as long as the approaches are there. Something happens to the bulkheads or the pavement going up to it, it may be a different story. So we'd like to get to that bridge and upgrade it now rather than having to potentially completely replace it later. The new secondary access route south of the Columbia slough will provide a needed second emergency connection. And I have Chief Edwards from the fire bureau here if you want to ask him any questions. Just to give an example, an international paper at 9111 Northeast Columbia Boulevard has an existing building size of approximately 281,000 square feet, and they are south of the slough. That building size of 281,000 square feet is between double and triple the threshold at which fire code requirements mandate a second means of access. So international paper is not currently in compliance with fire code requirements. This I.I.D. will bring them into code compliance. This secondary connection would also avoid a potential de facto moratorium on new development to the extent there are properties south of the slough that are less than 124,000 square feet. We wanted to upsize the size of their buildings to greater than 124,000 square feet. I covered the routine access, just to wrap up my recommendation to council is to move forward with this I.I.D., given this is an industry of area and commerce, this project will improve freight and only employee mobility for both existing and future businesses. On a final note, before I pass out a few things into the record, one of the things that the code requires me to do is to evaluate the financial feasibility of an I.I.D. Code specifies a minimum of a 2-to-1 evaluation to assessment ratio. The assessments can't be more -- the collective assessments can't be more than 50% of the value of the properties in the I.I.D. The value if you take a look at exhibit f, the valuation of the properties that remain straighted against the I.I.D. is 155.8-to-1, that's far in excess of the 2-to-1 threshold, and the overall ratio for all properties in the I.I.D. is 144.8-to-1. So that's a lot of information for you. I have Chief Edwards here if you have any questions. I did want to pass out an email from Mr. Howe, he sent the following the last council hearing. I just wanted to make sure you had a chance to look at this and meet with us today, and you can ask him any questions. The other email I'm going to pass out to you is from Dean Phillips of Davis Wright Tremaine who is council to international paper. I met with them earlier this week and I made the offer of to have a meeting with them this afternoon and bring in Alan Snook. One of the things international paper told me is they didn't understand the assessment methodology and how Alan arrived at the trip volume and the trip split that he did. So I thought this is an opportunity to establish within a national paper the baseline. What I like to do for all I.I.D.'s have property owners have an understanding of how we arrived at the assessment methodology. I received an email from Mr. Phillips this morning at 8:14 a.m. He declined to meet with Alan and me this afternoon, which I believe is unfortunate, because we won't have an opportunity to do -- to further explain how Alan arrived at the numbers. So I think it's fair to say international paper doesn't understand the assessment methodology, but they're opposed to that assessment methodology which they don't understand. Any questions by council?

**Potter:** I'd like to hear from the fire bureau about their issues with this area.

**Scott Edwards:** My name is Scott Edwards, deputy chief fire marshal, Portland fire and rescue. Mayor, our concerns are at this point particularly on the south side of the slough, we essentially, by putting in this extension, will double our access for both access and water supply into these areas where we have these potential for extremely large buildings. The way it is now, because of where we need to pick up water, our lines in the access come in from essentially one direction. It makes it very difficult for companies to additional companies to come in on large fires where we may have access restricted by hose lays that have already been committed from the one access point. This essentially gives us more options from the north and the south to get into these businesses and establish tactical fire ground operations. Right now we're limited from the single point of access on the east side and the railroad tracks significantly hamper our access into the area south of the slough

**February 28, 2007**

from companies -- from companies responding from the north side down columbia boulevard. So it gives us a lot more capability in terms of tactical fire-ground. It is actually a requirement for construction over 124,000 square feet we have to have two ways in and out and currently that doesn't exist. There is at least one building down there that already out of compliance that was built prior to these requirements, but by putting this access in there it will greatly increase the ability to put larger facilities in there without that restriction.

**Potter:** Thank you.

**Aebi:** Most of the remonstrances, as you see from the remonstrances in front of you, most are substantially similar. So think have all been addressed together. There were two that were individually written and the rest of them were pretty much boilerplate.

**Potter:** Thanks, folks. Do we have anybody signed up?

**Moore:** We have six people.

**Potter:** Please come forward, folks. Please state your name for the record. You each have three minutes.

**Dean Harris:** My name is dean harris, i'm the plant manager at owens glass container. You can see it off the road off 205. I had prepared a speech to talk to, a couple things came up during the presentation that would I question also. First of all, as I stated, the plant manager of the Portland plant, we're located at 5850 northeast 92nd. I'm here today to object to a proposal assessment out of property for local road and storm water improvements. Our operation contributes \$70 million of local economy through wages, is samuel alitoery, benefits and purchases. We employ 205 people. Our taxes now annually are \$600,000, which is the highest taxes we have on an individual facility in north america. We have 18 facilities in north america now, different states. This is a public road that owens already pays taxes to support. We have not requested these improvements. We will not receive any additional savings for these improvements that we are aware of. In our opinion this assessment is discriimi near to selected taxpayers in the l.i.d. district. This also establishes a poor precedent for the overall Portland community. I'm skipping a couple things because I got some questions at the end. Again, our current taxes are intended to cover these types of projects. We believe, and this is -- I have the ability to speak for the corporation, this a an antibusiness assessment that undermines the economic development in Portland. In addition, though I stated that we had \$70 million in sales, we're under constant pressures, inflationary pressures to maintain operations in this country. This is just another assessment, increase in inflationary pressures that heard -- that are standing in the business in this community. I would request -- can I get a copy of the presentation that was given that that could be emailed to me? You have my email address, I turned that in with a remonstrance, just to get some of the pictures. The one thing I noticed in the pictures, it shows sandy and other areas with a high traffic volume where traffic is almost off, and it's basically a parking lot when I leave work, and it's not just those areas, but that bridge picture that goes under 205 on alderwood, that -- I come out of that road that's near that, and that's backed up. It backs up usually from 5:00, I don't know when the pictures were taken, but from 5:00 on to about 6:00 it's just backed up. And usually going to the light to get onto airport way, you can sit there for at least 15 minutes. Especially later on in the week. Because that road does back up and it doesn't matter which way you get on to it, i'm not familiar with the road of alderwood, but going either way up towards sandy or towards airport way, they are backed up. And that's usually like in the middle of the day is when you see that kind of traffic that is demonstrated in the picture. That's all I have. Thanks for listening.

**Potter:** Thank you.

**Terry Oftedal:** Terry oftedal, i'm a director of operations at yo cream initial with manufacturing facilities at columbia and northeast 87th in the south part of this l.i.d. I would like to reiterate some testimony that I provided at the last hearing and add two further comments. Last time did I talk about our concerns for life and safety issues around the fact that there is only one access point to

**February 28, 2007**

this area in the south currently from columbia boulevard, and we have in recent history had an accident with columbia boulevard being closed down, and monia fumes exposed in the air, and no way of getting in or out of the area. This would solve that problem. That is the main reason why we're supporting this. The additional two points i'd like to make is that there is some question as far as whether there really is benefit to people in the south end by opening this up and I believe there is when the -- when the private road through the glass factory was open for our use, a number of us did use it on a regular basis. About 10% of our employees lived north of our factory, and found that to be the fastest way in and out for our daily commute, including me. And our local transfer truck, we have a distribution partner for a frozen product in the north side of the river, and in the summertime up to three truck loads a day go from our facility up to there and back, which is about six trips per day. That's a 53-foot trailer. And our truck driver says that even though there are congestion problems on all of the different options, that when that road was open, that is the preferred way to go. And then the third thing is cost. I believe that if we're going to do this, now is the time to do it. It's never going to become less expensive in the future. We're ultimately the ones paying for it, and we would like to do it when it's as cost effective as possible. So those are the reasons we would like to have you go forward with this. Thank you.

**Dean Phillips:** Good morning. Dean phillips with davis wright tremaine. I'm here representing international paper. I do have two representatives here, and somehow we got separated on the sign-up sheet. So I would like to defer my time and be assigned with them. I think they're just shortly after me. So I would like to proceed with the call-up if that please the council.

**Potter:** Ok. Thank you, folks.

**Potter:** Please state your name for the record.

**Dean Phillips:** Dean phillips. I'm with davis wright tremaine, representing international paper. Honorable mayor, council members, we do have a problem with this l.i.d., and I think it's only been partially addressed by city staff. By the way, mr. Aebi has been very professional in our discussions with him. The reason we declined to meet is because it's very obvious that the city is very supportive of the analysis that has been done by the consultants, and d.k.s. is a recognized traffic consultant, but there are problems with the analysis. If we could please have the initial map that was shown for this area, I think it is very apparent what is happening here if you look at the map. In the north area, the green, the largest portion of the green on this map is property that's owned by the port of Portland. And that property is -- contains 422.4 out of the total approximately 800 acres, i'm sorry, about 800 acres, 442 acres of it that is owned by the port. It's about 72%. I said 800 acres, i'm sorry, it's 589 acres that is the total acres within the l.i.d. according to the consultant's report. 41% of those acres are undevelopable. The south side of the slough that you can see, and the slough is about one-third from the bottom of that map, that divides the north and south areas. The south side of the slough is essentially developed. There's very little development that's going to occur. Any development that happens, there's going to be redevelopment. So what's happened is that the development and the impact in this area is going to happen with the development of the port. Lo and behold, the assessment and the methodology that has been chosen by the consultant is in fact a methodology that does not provide a special benefit to the properties in the south side. It really is a methodology that essentially results in a 50/buffett charge between the north and the -- a 50/50 charge between the north and the south. That we think is fundamentally unfair and that is the basis upon which we think that the methodology does not stand to the legal test. The legal test is that it needs to be a fair methodology and it needs to be roughly equivalent to the assessment. International papers are receiving \$155,000 assessment out of this. There's been no basis on which we are able to determine in discussion was our expert that immediately after these improvements they will sustain a \$155,000 benefit. And that we believe is the standard. And mr. Howe and mr. Todd have been gracious enough to extend and defer to me their time if that please the council.



**February 28, 2007**

**Potter:** We can't do that. They have to speak for themselves.

**Leonard:** I do have a question that would in effect maybe give you an opportunity. I am really concerned that in your email and from what we heard from Mr. Aebi that you've refused to meet to understand better the methodology that they use. I don't purport to understand the methodology as well as any of you, but I'm always concerned when a party to any discussion refuses to sit down and reason through why what is, is. And I'm -- so I don't need for you to discuss with me the problems with the methodology, but what I am concerned about is that you have neglected to take him up on his offer to explain it, and he seemed to be fairly clear in his testimony that had he had that opportunity, some of the misunderstandings that -- what he is characterizing as misunderstandings could be cleared up.

**Phillips:** I'll be happy to address that, Commissioner Leonard. It was not so much that we -- I don't think my email said that we would refuse to meet and discuss. We would never refuse to meet and discuss. What it says --

**Leonard:** It says we've concluded the meet would go most likely not be productive use of our time. I appreciate that is a skilled way of deconstructing to meet. Nonetheless, that is what it is.

**Phillips:** Let me explain that. We declined to meet for this specific reason, and that is that in our meeting, we did say that we didn't understand why the consultant came to the conclusion that he did. Regardless of how he came to the conclusion, it was apparent in the meeting that the city had supported the end result of that conclusion. So whether we understand how the consultant got to that conclusion, it is obvious that the city wants to proceed with that methodology.

**Leonard:** Let me clear up one misunderstanding. The five of us here represent the city. The staff represents the best work that they can do, but we consistently make decision here that sometimes is not what the staff recommends to us. So I have to go back to say it makes -- it ties my hands when I'm hearing from the staff that you're not engaging with them to try to at least boil down what your concerns are, because then it doesn't give me a lot of room to make an independent judgment. So from what I'm hearing from the staff is you're making an argument that I would like to be able to support based on faulty understanding of their criteria. So I get back to my original concern. It's not helpful to me, and if you misunderstood what the staff was telling you is what the council would do, I'm sorry, but we have quite a record where often times it makes sense doing something different than what the staff says. But in this case I don't know how I can do any different.

**Phillips:** I appreciate that. And as a matter of fact, what I had talked to Mr. Abby about was, we are certainly willing to meet. What we would think makes most sense in light of the fact that the methodology we think is faulty in its conclusion, even though we didn't understand the trip analysis and how they could get there, the real problem is with the final conclusion and analysis that says that we are going to assess only 53% of the total assessment to the north side, and 47% to the south side, so what we want to do is really talk about how we can look at a methodology that really is more fair to all of the property owners. We are certainly happy and think that that would be a fruitful discussion. And we think what would make the most sense is if the council could give a short hiatus which should not result in any substantial increase in the process, such as a two or three-week hiatus to allow us to have those discussions to talk about a methodology that would be more fair. Now, obviously what that would do is it shifts some costs over to the north side, the result of that may likely be to shift it to the port. They may have some objections, obviously, and we would have to address that issue with the port.

**Leonard:** Commissioner Adams tells me that's exactly what we did last time, is set this over to give you that opportunity.

**Phillips:** Well, unfortunately, international paper being what it is, it takes some time for the right people to get the right information. We were just brought in to this a couple of weeks ago, so that has been our involvement with the project. International's notice of its assessment came in December. So they focused on the dollars starting with the December 13 letter I believe from staff.

**February 28, 2007**

So that's been two months. Essentially. A little over two months. But very little over two months. So in the grand scheme of things, commissioner Leonard, that really hasn't been a significant amount of time. I know mr. Abby is probably frustrated with this because he's been dealing with the project for two years. But the dollar assessment notice just went out in december. And that's of course what people respond to when they actually start looking at the dollar.

**Adams:** Your suggestion is for two weeks?

**Phillips:** We would appreciate that. And that would give us an opportunity we think to sit down with mr. Aebi and the staff and really talk about the methodology, why we think it is an unfair allocation and hopefully convince them that it is in fact an unfair allocation. That seems to us to be a very short hiatus in this scheme of things.

**Leonard:** From my perspective, you and the glass company provide great jobs. I'm very aware of that. So my inclination would be to help you as much as I can. I'm just telling you that this is not a good entreaty with me to try to do that, when you're refusing attempts by the staff to sit down and talk. And if you do get an extension of time, of course my reason, and i'm -- there's a number of other people here that would agree with that, but my reason for doing that would be that you would earnestly sit down and try to find common ground and not use it as a delaying tactic or an opportunity to do something that's not fair.

**Phillips:** Two weeks --

**Leonard:** I want it to be fair, I want to be fair, but this doesn't feel like that's what's happening so far.

**Phillips:** I can assure you, commissioner, that's why we requested the meeting initial letter, because we wanted to start the talks with the staff.

**Leonard:** And have a meeting that's productive and then refuse follow-up meetings. That just doesn't make sense.

**Phillips:** I appreciate your comments. This is not a delaying tactic. This is simply an opportunity for us so that we can in fact have some meaningful discussions.

**Potter:** That's the only objection you have to this, if you thought that it was a fair assessment model, then you would be supportive of this proposal?

**Phillips:** We think there are legal objections, honorable mayor, as well to the project. But if we can successfully resolve the allocation method, we certainly will withdraw our objections and proceed in support of the project. So the answer, the short answer to your question is, yes, if we -- we will withdraw all of our legal objections that we have for the project if we can come up with a fair allocation method.

**Potter:** And a fair definition would be some independent party mediator working with the groups to come to some sort of new model? Or is it your definition of fair?

**Phillips:** We would be happy to go through a mediation process, if there is a third party available that would help mediate this, we would certainly be open to that. I quite frankly, even without that expense, I think that we can sit down with staff -- i'm confident that we can sit down with staff and come to some at least understanding now the staff may ultimately disagree with us as to what a fair allocation is. But I think that we can get there even without a mediator. I don't think we need a third-party mediator.

**Adams:** As a sponsor of this i'm comfortable extending it for two weeks and I appreciate the conversation that you had with the mayor and commissioner Leonard. I'm going to take you at face value that you're representing your client, that you will enter into these discussions in good faith and this isn't about trying to --

**Leonard:** And the glass company as well. Our understanding is not -- is that they would participate.

**February 28, 2007**

**Phillips:** We would be happy to have any of the other property owners that are on the south side. I don't think there's any objections coming from the north side. Anybody that wants to join in those discussions, we have no problem with that.

**Potter:** Is it ok to move this forward two weeks?

**Phillips:** Thank you very much.

**Moore:** We have more people to testify.

**Potter:** Let's go ahead and hear them.

**Lise Glancy:** Good morning. My name is lise glancy. I'm here to reiterate the port's support for the 92nd l.i.d. What i've heard today is it seems like there's an issue about benefit and assessment. And i've asked for the map to be put back up which shows the access points that currently exist, because I think there's some suggestion that the port ought to pay a larger share, though the assessment has been based on a loud -- traffic from allowed development in the l.i.d. area. So it doesn't matter whether the south of the slough is developed, and the north isn't, the assessment's based on trips that will occur once -- at the capacity of development that is permitted.

**Saltzman:** That assumes cascade station --

**Glancy:** Assumes cascade station, p.i.c. buildout, that's correct. So if you look at this map, this improvement will provide a second connection from existing businesses along columbia boulevard south of the slough as you've heard. And it provides not a second, but a fourth connection for cascade station, Portland international to the major arterials and freeway system. And at peak times you've heard both interchanges, the airport way and killingsworth interchanges are very congested. In addition to providing a secondary emergency access for those businesses, again, south of the slough, this is not the port reaching that particular benefit, the 92nd avenue l.i.d. Improvements will provide a potential bypass via alderwood-holman to the congested interchanges, and that's for both freight and employees. And we have looked at those interchanges and they are not -- the holman -- alderwood is not backed up when we have been there at the 5:00 and -- 3:00-5:00 time period. This bypass point is relatively uncongested. As noted in my previous testimony the port and developer of cascade station has invested substantially in the infrastructure of the area over the past. [p.c.a. Technical difficulties] we already have the alderwood axis point for port properties. To the credit of the city, they've done a great job of value engineering this project down from \$3 million to \$2.4 million. I think the longer we wait the costs are going to only go up, and that's unfortunate for all of us. And the port has been paying its share and continues to and transportation investments in the system. Thank you.

**Christopher Cournoyer:** My name is christopher, I represent a small property owner, thomas saunders, who owns a 20,000-square-foot building in the south area of the area in question. I don't have a lot that i'm going to add this morning because you've allowed this to be set over. I will participate in the valuation -- the discussions that will did on regarding the valuation method that was made. I do believe there is an unfair evaluation that's taken place, or valuation that's taken place and I do believe a small property owner on the south side has a very high assessment to pay for very little value. We currently have no bridge that functions, it's all been blocked off. The property has been utilized to the benefit of the tenants in that structure for some many years, and I see no incentive on our part at least to change it. At the same time we're being assessed over \$25,000 to make improvements. We don't have objections to the idea that the transportation system be improved, we just want to make sure that the individuals that are actually benefitting from it are paying for it, and in my estimation, with -- with due respect to my colleague, the port of Portland and the development of property for big box stores on the north side that are -- that's driving this. And it's our hope that in reevaluating that valuation process, we'll be able to come up with a fair dollar amount to be paid by small business owners on the south side. Thank you.

**Moore:** March 14 at --

**Potter:** At 9:30?

**February 28, 2007**

**Moore:** Did you need a time certain?

**Aebi:** Just a clarification. I want to make sure I understand this. We're going to continue the first reading on march 14?

**Auerbach:** Technically if there are no amendments could you pass the thing at the next reading f there are amendments you'll need to bring it back again.

**Aebi:** So we're going to move to a second reading on march 14?

**Adams:** I thought this was a second reading.

**Potter:** No.

**Leonard:** If there's amendments we have to set it over to another hearing.

**Auerbach:** It will require another hearing.

**Leonard:** The idea is if there is discussion that both sides agree should maybe cause a different reallocation that we would have amendments. We should be open to whatever discussions lead.

**Aebi:** Sounds to me like I need to schedule a meeting with alan between now and march 14, and i'll endeavor to schedule that as quickly as possible, and i'll obviously endeavor to get the meeting notices out in the mail as quickly as possible to everybody. I think in the interest of expediting this i'll just send the notices out to the south property owners, south of the slough. I'll get that meeting scheduled, we'll meet between now and march 14, welcome back on march 14 --

**Adams:** I think you should have a meeting initially with the folks that have come forward with concerns, and then you can have another meeting after that so that you sort of satisfy their requirements of meeting notices and discussions. But I think having some -- an initial quicker one-on-one or small group meeting with those that are objecting would be useful as well.

**Aebi:** Ok. Commissioner Adams, one thing I struggle with a little bit, I try to be fair and objective and consistent with everybody, so I just want to make sure that I don't meet with a subset of property owners and somebody who wasn't part of that subset complains they weren't invited to the meeting. Why don't we do this. I'll set up --

**Adams:** I think the small meeting is just a meeting for information. Part of it you described earlier was the desire to just sit down and explain to them the approach. I don't think that any decision-making should go on, I think that goes on with a fully noticed meeting if you're going to get into sort of an overall discussion allocation, but I think an initial meeting to get them up to speed on approach on the allocation --

**Leonard:** And I would just add, andrew, that you're hearing the concern which they argue is the reason for not asking for another meeting. Is that there had been some preconceived decision on what the proper allocation should be. I understand you do this all the time and it's frustrating, but to the extent you can be open to their suggestions, I think that's going to help a lot, and that's getting a collaborative resolution to this. So if they make an argument that maybe we haven't considered, we should be open to that.

**Aebi:** I -- just to clarify, the term of -- probably not what would I describe my own feelings. I just felt disappointment when I got --

**Leonard:** I understated them?

**Aebi:** Well, I just was disappointed when I got the email this morning. I'm going to call everybody who submitted a remonstrance. I think i've got everybody's phone number. A small group meeting to exchange information, and we'll focus on those folks for now. The folks that have submitted the remonstrances. Am I on the right track?

**Leonard:** If you think she have a point, you're right, you want to include people that would be then adversely impacted if you change the methodology.

**Aebi:** And what i'm saying is if we come up with something that adverse -- you think the term mr. Phillips used in our meeting earlier this week, yeah, well, now we're going to go -- I think what we need to do is start with that meeting and figure out what their proposal is. Part of my difficulty is I don't have anything specific or substantive to bring to council and say, here's what's being proposed,

**February 28, 2007**

here's the impact. I just have vague generalities. There's nothing actionable. If we have this meeting and there's something specific put on the table, bottom line is they need to come up with something better than alan snuck has come up with, and he didn't graduate from college yesterday and this was his first project. He's been working on this port area for years, he knows this area like the back of his hand. He's very competent, he's very skilled, he's very professional. I'm all open to alternatives, but when we have this informational meeting they need to put something on the table. They put something on the table, I can analyze what the impacts are, and I will contact all the people who are adversely affected and then we'll make sure everybody has advance notice of that.

**Leonard:** We can't ask any more than that.

**Aebi:** I know i've taken a lot of your time today, so I try to be brief. I probably used all my chips up this morning, but I felt like there are a lot of details we needed to cover.

**Leonard:** We didn't -- please persevere.

**Aebi:** Thank you, commissioner.

**Potter:** I thought you did a great job. Thank you.

**Adams:** Thanks, andrew.

**Moore:** Did you want to give this a time certain for the 14th?

**Potter:** Yes.

**Moore:** It will be 10:45. On march 14.

**Potter:** 10:45 a.m., march 14, time certain. Time certain only means it won't be heard before that. It could mean sometime after that depending on what's occurring at council that day. Please read the 10:15 time certain.

**Item 168.**

**Adams:** We're going to continue this item. But do we have a date to continue it to, time certain?

**Jeanne Harris:** This just came up. If you could look --

**Adams:** I would like to -- I understand you've made a decision. How long have you worked for the city?

**Harris:** 23 years. Plus.

**Adams:** I understand you've made a decision to perhaps pursue other ventures besides continuing to work for the city.

**Harris:** Yes. I'm starting with a trip to brazil.

**Leonard:** Oh, my goodness.

**Adams:** Even though we're continuing this, you've done a lot of work on this, and your individual work in pdot and other areas has made a huge controversy to making Portland the great city that it is in so many ways. I just wanted to take this opportunity to thank you for your 23 years of service and wish you all the best in the next chapter of your life.

**Harris:** Thank you, commissioner Adams.

**Moore:** How far out do you want to go?

**Harris:** Two weeks?

**Adams:** Or so.

**Harris:** That's good, i'll still be here then.

**Adams:** Then i'll have to say it all over again. Or three weeks.

**Moore:** 11:30. March 14.

**Potter:** A time certain?

**Moore:** Yes.

**Saltzman:** Do we have a lot of time certain that afternoon:

**Moore:** We have budget meetings in the afternoon. And I already have two time certain scheduled that morning, now three including the last one. This is the fourth.

**Adams:** That will work.

**Leonard:** And bring a flashlight.

**February 28, 2007**

**Harris:** Thank you very much.

**Potter:** We're going to move to the regular agenda. Could you please read item 188 and 193 together.

**Item 188 and 193.**

**Adams:** Thank you, mayor. This has already been the big public announcement, and brouhaha already occurred out at the Oregon armored site. The money for this comes to us via the federal government, thanks to work of one of my former bosses, peter defazio, who is now chair of the surface transportation subcommittee for the u.s. House of representatives. He was able to secure the \$3.2 -- \$4 million in federal appropriations to build a prototype of a streetcar with a firm that would have to compete in an r.f.p. And win so that we could start having the nation's first modern manufactured streetcars. And it's very, very exciting that a local firm, Oregon iron works, competed nationally in an objective process that we oversaw and won. And in addition to jeff and vicky, we have chandra brown, vice-president of Oregon iron works, and who has just done a great job of make sure her company competed successfully, and vicky and jeff made sure the process was objective and fair. I understand we're starting with you, jeff?

**Jeff Baer:** Yes. Good morning, mayor Potter, city council. I just want to -- jeff baer. I want to highlight issues related to the solicitation process that commissioner Adams described. One was that this was a competitive request for proposal process. We advertised it in august of 2006, the responses were due in october and we had 28 different firms obtain the request for proposal documents so we had real good interest in the solicitation process. The review that occurred was very comprehensive, of which we had an evaluation panel go through the proposal, did a very comprehensive review process, it was also -- we had a cost analysis done by an independent tri-met auditor to validate the cost associated with that. And as a result at the end of the day Oregon iron works was selected and we issued the notice of intent to award, and I just want to highlight one other issue related to the eagle benefits requirement. It kicked in in january, and i'm pleased to identify that Oregon iron works is currently they're in delayed compliance status, primarily related to their open enrollment period that's going to happen in the fourth quarter of this year. And also related to collective bargaining agreements. Which we anticipated because of implementing the program we knew we were going to kick in, and that was factored into the program. So i'll stop there and turn it over to vehicle aye.

**Vicky Diede:** Thank you. Good morning. For the record, i'm vicky diede in the office of transportation and the city's project manager for Portland streetcar. This is really an exciting activity I think we have going on here, and we're very much looking forward to it. In front of you is the contract that we're asking for authorization so we can issue a notice to proceed to Oregon iron works so they can start ordering long lead items and that we can start building the streetcar. I would point out you may have a couple three pages in front of you, the actual document itself is about yay thick and we thought we would save the trees and not send it to everybody. But it consists of the r.f.p. itself, the response to the r.f.p., small changes that we made to some of the technical specs and some of the special provisions. But it is all on record and has been agreed to by Oregon iron works. So would I turn it over to chandra.

**Chandra Brown:** Good morning. This is actually my first time up here, so it's a pleasure to be here, and I want to say thank you very much. Not just on behalf of Oregon iron works, but I think what hasn't been stated is this is going to be a by america car. So it will be the first by america modern streetcar, which means 60% of the content will be done here in the united states. And it's our target right now to do at least 75%. And with that, we're going to use as much local content as possible. We are excited about creating a whole new work force, trained in a brand-new industry with such -- which fits perfectly with transportation cluster. Manufacturing cluster. And a whole new work force here for this region. So we're very, very excited about it. We're committed to using as much local product as possible, and it wouldn't have been possible without anyone -- everyone's

**February 28, 2007**

support. It's been one of the most pleasurable experiences of my time at Oregon iron works. I'd like to thank you all for your time and attention, specifically commissioner add a little, and I really appreciate it. We're very much looking forward to moving forward. Thank you.

**Potter:** Questions?

**Saltzman:** How long will it take to build it?

**Brown:** Our current schedule, if we have this done, we have an 18-month schedule, but I know the city would like it as soon as possible because we're giving it to you as soon as we're done. The fastest we can get it done and get it done correctly and safely, 12 months. But 18 months is the contract duration.

**Potter:** Thank you, folks.

**Moore:** No one signed up.

**Potter:** Anybody here who wishes to testify? The first item is a report, we need a motion to accept.

**Leonard:** So moved.

**Saltzman:** Second.

**Potter:** Call the vote.

**Adams:** Aye.

**Leonard:** This is a very exciting project. I love using local industry like this to help us do fun things. This is just outstanding. I appreciate the work. Thanks. Aye.

**Saltzman:** I just want to echo commissioner Leonard's remarks. It is very exciting to have our streetcars manufactured here as much of as we've appreciated the great service and great vehicles provided to us, it's great to have this local capacity using local employee and local materials. So -- and I hope you'll be very bus with all the other cities and their interest in streetcars too. Aye.

**Sten:** I agree. This is a home run. I want to congratulate everybody involved. This -- I think one of our economic visions which is taking a step closer to reality now, is taking some of the innovations Portland is doing, such as streetcars, green buildings, other things, and making them profitable so we can sell to the rest of the world as they try and figure these things out. So i'm very excited of the congratulations to commissioner Adams and the private sector, and I look forward to riding on this car sometime between 12 and 18 months. Aye.

**Potter:** Aye. [gavel pounded] No one has signed up?

**Moore:** Correct.

**Potter:** Emergency vote, please call the vote.

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

**Potter:** Aye. [gavel pounded] please read item 189.

**Item 189.**

**Saltzman:** I know we have signed a letter to the legislature expressing our concern about the impact Oregon's rural counties will take if they lose -- they are losing federal funding that has been available to them for many years. And -- but I thought it was worthy for us as a city council to also send this resolution directly to the members of congress and the president because, as I said, as early as next month Oregon's rural counties will be taking significant hits to their general funds. They've relied on federal funding from timber sales in the historic past in 2000 the congress authorized the secure rural schools and community self determination act to compensate local governments for declining revenues from timber sales, and the funding expires this year, and to date congress has not renewed this funding. So as we speak, counties throughout the state of Oregon, some 33 out of 36 counties are affected by this, are look at some very deep cuts to their general funds. The deepest cuts look to be towards public safety, which accounts for some 50 to 75% of all affected counties general funds. For instance, in josephine county alone, the sheriff will have only one patrol car for an area of the size of rhode island. The majority of the counties face sizable cuts in their road maintenance budgets, meaning in many counties they'll not have the funds to do any

**February 28, 2007**

repair work on their roads. And in Jackson County, they are already planning to shut down all 15 libraries. So needless to say, schools and health and social service agencies will also be severely affected by this. This is going to include closures of domestic violence, shelters, sexual abuse centers. So we need Congress to reauthorize the secure rules goals in community self-determination act, and we need them to do it soon. And I know all this Council feels strongly about this, strongly enough that we should send this message straight to our delegation who has been working hard on this, and to any members of the rest of the Congress and to the President as well, that we want Congress to act now to restore the funds for Oregon's rural counties. And this is a huge concern throughout the state of Oregon, including its largest city. So I urge adoption of this.

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

**Moore:** We did, and no one signed up.

**Potter:** Is there anybody here who wishes to speak to this matter? Please call the vote.

**Adams:** Aye.

**Leonard:** Greatly appreciate Commissioner Saltzman bringing this forward. There's probably nothing that has hit harder our communities that have depended upon O&C dollars that have dried up to fund local services, fire, police, libraries, then this action by the Congress. So I'm really appreciative of Commissioner Saltzman's efforts to bring attention to it, to the entire Congress and to the President. Aye.

**Saltzman:** Aye.

**Sten:** Commissioner Saltzman, thanks for bringing this. This is a very important statement, and it also will affect us dramatically. So I hope something can change. Aye.

**Potter:** The state of Oregon cannot afford to lose these monies. Even though it does not have the direct impact on the city of Portland, it certainly does indirectly in terms of the diminishment of services around this state and how that would affect us in terms of transportation, safety, and many other areas. So I appreciate Commissioner Saltzman's leadership. I also appreciate the state legislature's House, Agriculture, and Natural Resources Committee for their support of the House Joint Memorial urging Congress to pass legislation reauthorize this act. I vote aye. [gavel pounded]

**Item 190.**

**Leonard:** Because of my own schedule, I didn't get around to everybody's offices to get them to sign on this as would I have like to. So I want to provide the opportunity here if there's no objection to add Commissioner Adams and Saltzman to the resolution. It was an oversight and I apologize. So if there's no objection --

**Potter:** Seeing no objection.

**Leonard:** Thank you. Four years ago Commissioner Sten brought forward a resolution to -- that would have said had it passed, that did say had it passed, that we did not support an invasion of Iraq without the preauthorization of the United Nations. Talk about naive, Mayor Potter. I listened to what the Bush administration said and actually believed that they had the evidence that there were weapons of mass destruction and evidence of terrorist cells in Iraq, and unfortunately cast the vote that caused that resolution not to pass. In my continuing attempt to find pen answer for that action, I bring this resolution forward at the request of Congressman Blumenauer. Who we had the pleasure, some of us had the pleasure of joining here in the chambers as he announced his resolution to bring to an end the hostilities in Iraq. He couldn't be here today, and he's asked that I read this letter and to the record. Dear Commissioner Leonard. I would like to thank you and your colleagues on the Portland City Council for taking a stand on the biggest issue that we face as a nation, the war in Iraq. The resolution you take up today is an important step in the effort to end the war. This is a decisive moment in our nation's history. We all have a station in the future of Iraq, because what happens in Iraq impacts not only Iraqis and Americans, but the entire world. I recently delivered a speech on the House floor calling on every leader to lay his or her cards on the table. It is time to be true to the responsibilities of office by letting the American people know what we stand



**February 28, 2007**

for and how we will work to end the conflict. I have introduced legislation, hr 663, the new direction for iraq act, which deals comprehensively with the military, diplomatic, political, economic, and humanitarian strategies needed to move forward in iraq. Others must do their part to end the war. The Portland city council has taken that role very seriously, and I thank you for it. I'm hopeful that in our community we can be a part of the broader conversation that will make a difference. I would love it if we could find in Oregon that there is a consensus that would emerge. It will help to refine the policy and the important work that needs to be done in terms of healing wounds. We have so many other challenges we care about, challenges that have made more -- that have been made more difficult because of the division and waste of resources in iraq. It is the delayed the day we have been able to deal with health care. Rebuilding our communities, affordable housing, environmental protection, and global warming. Our challenge is to use this resolution as a spring board before we get momentum on broader issues and change course for a new direction for our country. Please thank the entire council for their leadership. Sincerely, earl blumenauer, member of congress."

**Potter:** Do we have anybody signed up to testify?

**Moore:** No.

**Potter:** Is there anybody who wishes to testify on this matter? Please come forward. Please state your name for the record.

**Dan Handelman:** Good morning. My name is dan handelman, i'm here on behalf of peace and justice works. You probably notice that the chambers aren't as full as last time you considered a resolution concerning iraq. Of the groups involved are currently working on a statewide resolution calling for the troops to come home from iraq and against the escalation of troops. And it had its first hearing this monday down in salem, and we had a very good turnout for that. So while peace and justice works is generally supportive of representative blumenauer's proposal and this resolution, we wonder if this resolution will reflect a change in policy, because the resolution that you passed on november 30 call for the u.s. To immediately begin the rapid and orderly withdrawal of troops from iraq. Representative blumenauer's proposed legislation calls for the withdrawal to begin in one year. So we would recommend that a whereas clause be added to this resolution that references the november 30th resolution by the city of Portland, and a resolve be added, requesting that representative blumenauer call for the troops to begin coming home immediately. Because I believe that's what the people of Portland came and requested from you, and that's what you put on the record last november. So we hope that you will consider amending this and urging commissioner blumenauer -- representative blumenauer to call for the troops to come home immediately instead of waiting a year. Thank you.

**Leonard:** I would only say that while I personally agree with your sentiments, as I said here, I think you were here when representative blumenauer was --

**Handelman:** No, I wasn't here.

**Leonard:** I said one of the lessons I learned in my no vote four years ago was to listen to my congressman. And I know that he has very, very thoughtfully put together this resolution, his legislation, in an effort not to make a statement, but to actually have something happen. And I need to give him deference to that, and I hope the rest of the council agree was me on that. Because I think he actually has put together a very thoughtful timetable that is really and arguably the best plan i've seen, including the speaker of the house to bring the troops home.

**Sten:** I suppose -- I think dan raised an important point. I don't know that it ultimately will fall too heavily in d.c. which way we go on this, but I think the point is we want this -- I think falsely advertised and even worsley waged debacle to end. I would be open to some sort of whereas that said, you know, whereas our support is not limited to this time line. I support earl's point of view. I can't say i've dug in close enough to say that I would automatically support it over a faster withdrawal that somebody came forward with. And i'm not sure given the time line that i've had

**February 28, 2007**

time to really look into that. Again, I don't consider it an enormous piece, but we did pass a resolution --

**Leonard:** We did. And obviously --

**Sten:** That you authored saying something differently.

**Leonard:** Obviously we did, and frankly this resolution is a resolution that he helped us craft, that he felt would help make his case to pass his legislation, and I just don't want to do anything that distracts from our support of him that others might use maybe not to get on his bandwagon. That's my only concern. And I agree with everything that's being said, but this is an effort to give him some kind of support from back home with our own delegation and with the other members of congress. And I just want to be really crystal clear that we appreciate what he is doing in this very thoughtful stand he's taken.

**Sten:** Is it -- obviously I can have whatever position I have, but would it be consistent from your point of view, commissioner, to say that this resolution supports a specific piece of legislation and it does not --

**Leonard:** Yes.

**Sten:** Distract this council's belief that ending the war more quickly is -- remains a good thing?

**Leonard:** I like that. I think that's a good suggestion.

**Sten:** That's how I read this. That's how I sponsored it.

**Leonard:** Could we draft this to --

**Harry Auerbach:** You could add a whereas that says the council previously adopted and affirms resolution whatever the number was that you passed in november, and add that as a whereas clause.

**Leonard:** Does that work? I would agree to that.

**Sten:** I think that's -- why don't I move that.

**Potter:** Do I have a motion?

**Sten:** So moved as stated by our client attorney.

**Leonard:** Second.

**Potter:** Please call the vote.

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

**Potter:** Aye. [gavel pounded]

**Leonard:** I see we have other -- did you want to say anything, jody?

**Potter:** Now we vote on the resolution. Please call the vote.

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

**Potter:** I just wanted to say that I think in november the voters spoke very clearly about what they wanted done. And I think this just sends another reminder to congress that they need to move forward with a plan on how they're going to do that, and I support this. Aye. [gavel pounded] please read item 191.

**Item 191.**

**Leonard:** I would like to move to set this over to tomorrow afternoon's agenda at 2:00.

**Potter:** Is that ok with commissioner Sten?

**Sten:** Yes.

**Potter:** No objections, move to 2:00 p.m. tomorrow. Please read item 192.

**Item 192.**

**Potter:** Second reading, vote-only.

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

**Potter:** Aye. [gavel pounded] please read item 194.

**Item 194.**

**Adams:** Can we refer this back to my office?

**February 28, 2007**

**Potter:** Any objection? Hearing no objection, back to commissioner Adams' office. Please read item 195.

**Item 195.**

**Potter:** Commissioner Saltzman.

**Saltzman:** I'm going to ask bruce walker of the office of sustainable development to come up and explain this resolution.

**Potter:** Is this also heard with 196? It's the -- no.

**Bruce Walker:** I'm bruce walker from the office of sustainable development to discuss the residential franchise renewal. Mayor Potter, members of the council, I would like to just briefly run through this. The residential collection system for garbage, recycling, and yard debris, was instituted in 1992. We issue agreements with private companies. There are 10-year franchise agreements that are typically reviewed mid franchise, or at the five-year point. We're at another five-year increment. We're here today to ask you to direct us, direct office of sustainable development to begin an official residential franchise review process. You will see in the attachment that the franchise system performance, what we're looking for is meeting goals in waste reduction and recycling, customer service, and cost effectiveness to our residential customers. The system review will be guided by what's in attachment a that encourage a range of franchise sizes, in other words, small to large companies, advances the city goal of reducing waste, and increasing recycling rates, having haulers provide exemplary customer service, ensure efficient and safe operations, and implement environmental best practices. And if I could adjust one note on the last environmental best practices, tomorrow, march 1, all residential haulers will begin using b-20 in their trucks. Now, commissioner Saltzman worked very closely with us to get a direction to be moving what we believe are some more sustainable practices. That's just one element of our overall residential system, and if I could for just a moment, our staff person jennifer porter over here has done terrific amount of work on our residential program and specifically the biodiesel program. So I just wanted to say we've got --

**Saltzman:** I'm sorry, I forgot to call up jennifer too. Let's bring jennifer porter up too.

**Walker:** I just want to take this opportunity. There's a lot of work that goes on in our office. Jennifer does a terrific job for us, and so i'm not trying to take up more of your time, but sometimes the people who do the best work aren't always identified, and I just wanted to make council aware of that. With that and I didn't really give her any -- I would like to say if you got any questions, we're happy to answer them today, but what this resolution calls for is within the next -- it's a six-month time line to come back. Our goal is to be back much sooner than that, but to undertake the work to review performance in our system and come back to you for final direction if we're to continue on in this -- with this system.

**Saltzman:** Do you want to add anything, jennifer?

**Jennifer Porter:** I think he covered it. Thanks.

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

**Dave White:** Good morning. My name is dave white. I am regional representative for the Oregon refuse and recycling association. I'm the chair of the tri-county council. And our members serve the majority of your city residents. I worked on the last two franchise reviews and we are looking forward to the one that's coming up now. Each time we go through this process it's an opportunity to look back and see what's worked well and maybe what hasn't worked so well. But it's also an opportunity to look for ways to improve a really good system. We've got great results in Portland, we've got great customer service. I think your staff does a great job in looking for new ways time prove the system. In the next five years I can predict, you look back on the last five years, where we're heading, we'll be looking at alternative fuels, reducing diesel emissions, organics food and waste at the commercial but also maybe at the residential customer. Roll cards, new opportunities to implement sustainable programs, adding additional materials to our programs, these are all

**February 28, 2007**

things, and those can happen in the administrative rule process, but when you look at the franchise and say this is where we're intending to go, this is a great opportunity, we look forward to working with you on that.

**Potter:** Thank you.

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

**Potter:** Please call the vote.

**Adams:** Aye.

**Leonard:** I appreciate this work, and particularly I now know who the point person is. You can look forward to hearing from me soon. Aye.

**Saltzman:** We tried to keep her in the program as long as we could. [laughter] witness protection. Anyway. I look forward to this process, and I think good things will come out of it. Aye.

**Sten:** Yes, I do too. Aye.

**Potter:** Aye. [gavel pounded] please read item 196.

**Item 196.**

**Potter:** Commissioner Saltzman.

**Saltzman:** This first reading?

**Potter:** Yes.

**Saltzman:** Ok. This is simply one company's basically selling their franchise for residential disposal to another recycling and disposals to another company. Portland disposal and recycling. Straightforward transaction.

**Potter:** Anybody to testify on it? Anybody signed up?

**Moore:** I did not have a sign-up sheet.

**Potter:** It's a nonemergency and moves to a second reading. Please read item 197.

**Item 197.**

**Potter:** Commissioner Saltzman?

**Saltzman:** Thank you, mr. Mayor. Today we have the opportunity to announce a tremendous contribution of system development charges to help grow Portland's botanical gardens. They include leach botanic garden, the japanese garden, hoyt arboretum, crystal springs rhododendron garden. These five gardens are some of Portland's hidden gems. They also are among Portland's top 25 tourist attractions, and serve as a refuges for plants, wildlife, and people. The grants from this program can be leveraged to enable our gardens to make capital improvements. These will help guarantee improved capacity for visitors in years to come. And this new program also ensures protection and propagation of some of our most valuable botanical treasures. We have riley whitcomb with us, to answer any questions, and probably somebody from one of our gardens. I don't know your name.

**Riley Whitcomb:** Mayor, commissioners, riley whitcomb, park s.d.c. program manager. I have with me today cathy van bean, the executive director of crystal springs rhododendron garden. Parks 2020 vision, when that was completed back in the year 2000, identified parks s.d.c. as a key funding component to help meet the needs of our growing city. This ordinance facilitates me in the growth needs related to the city's botanic gardens through strategic investment of s.d.c. Funds as identified in the park s.d.c. Capital improvement plan adopted by council december of 2005. The proposals for capacity expanding projects have been -- Portland classical chinese garden, leach botanical garden and crystal springs rhododendron garden. Each garden has identified opportunities to expand capacity through strategic investment and capital improvements. The director of parks recommends allocating a total of \$500,000 per capacity increased in improvements to assure equity of investment, geogrphic fairness -- eligible for a grant of up to \$100,000 of s.d.c. Funds and the qualifications are based on them submitting a demonstrating that their proposals are in fact capacity increase, that's one of the things we have to show. So an example might be improving surfacing of

**February 28, 2007**

a gathering place that could extend the season or frequency of events so more people could use the garden. That type of thing. Any questions? Cathy is representing the gardens.

**\*\*\*\*\*:** I have a statement. Should I read it?

**Potter:** Please.

**Kathy Van Veen:** Ok. Good morning, mayor Potter and council members. My name is Cathy, I am volunteer chairman of the Friends of Crystal Springs Rhododendron Garden. Today I'm speaking on behalf of Portland's five botanic gardens. I'm joined here today by my colleagues from the nonprofit citizen-led groups that support each of Portland's botanic gardens, Crystal Springs, Hoyt Arboretum, the Japanese Garden, Leach, and the Classical Chinese Gardens. These are special places from quiet contemplative spaces that renew the spirit, to unusual plants and trees that connect us to the marvels of nature and remind us of the importance of stewardship for our natural environment. -to-to scenic hiking trails that exercise the body. Our gardens serve over 680,000 visitors each year, serving people from all areas in socioeconomic groups of our metropolitan area, while also attracting many tourists. At current rates of growth we expect to serve almost double that number of visitors each year by 2015. The land under the gardens is owned by the city of Portland, but each of the gardens is supported either in whole or in part by nonprofit citizen-led groups. Together our nonprofits contribute 4,700,000 each year to the operation and have put millions of dollars of improvements over the years into these public facilities. Much of our support comes from our over 13,000 members. In addition, we work with over 800 citizens who volunteer their valuable time and skills to these gardens. Today we are asking city council to approve the \$500 of S.D.C. funds to help increase the capacity of each of these gardens to serve our current visitors and prepare for the increased usage we all expect. First class botanic gardens are a hallmark after great city for the beauty and recreational experiences they offer. In addition to recreation, our gardens provide a range of other services to the community, from green spaces vital to both human and wildlife, to cultural experiences, environmental education, facilities for weddings and other events and conservation of endangered species. The S.D.C. funds will help to support Portland's five botanic gardens so that we can continue to serve this community. Thank you very much for your time and consideration, and with special thanks to Dan Saltzman for his leadership in Portland parks.

**Potter:** Any questions? Thank you, folks. Did anybody sign up to testify on this matter?

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

**Potter:** Is anybody here who wishes to testify on this matter? A nonemergency, and moves to a second reading. We're adjourned until 2:00 p.m. [gavel pounded]

At 11:17 a.m., Council recessed.

**March 1, 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.

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**MARCH 1, 2007 2:00 PM**

**Potter:** Karla, please call the roll. [ roll call ] [gavel pounded]

**Potter:** We have one item to take care of before we hear the 2:00 p.m. time certain. It's item 191.  
**Item 191.**

**Potter:** Commissioner Leonard?

**Leonard:** Thank you, mayor Potter. The mayor and I have worked hard together on this in the past week and the result is a consensus resolution that I think is actually going to be very helpful in addressing some of the concerns we heard last week and the week before, but still get at the issue, all of us said we support it, and that is to allow firefighters and police officers talk at the bargaining table about their safety. So I am very happy with this, and I appreciate very much mayor Potter's work on this. And I move to substitute this language.

**Sten:** Second.

**Potter:** Discussion? Please call the vote.

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

**Sten:** I appreciate your hard work on. This i'm glad to vote aye.

**Potter:** I do too. I thought -- it meets the needs I think of both our public safety officials as well as the city. So I heartly support this and encourage the legislature to take note. Aye.

**Leonard:** Do we need to vote one more time?

**Moore:** On the actual resolution.

**Potter:** Please call the vote.

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

**Potter:** Aye -- [gavel pounded] please read the 2:00 p.m. time certain.

**Item 198.**

**Leonard:** As staff is coming forward I want to acknowledge st. Francis academy in the balcony. Hi, guys.

**Potter:** I understand you have a relative up there?

**Leonard:** I have nicole, hi, nicole. My favorite 14-year-old in the world.

**Potter:** I like them. They came by my office.

**Leonard:** Yes, I heard. Excellent.

**Potter:** Ok. We're going to start -- i'd like to remind folks prior to offering public testimony the city council or lobbyist must declare which entity he or she is authorized to represent. We'll start with chris dearth, bureau of planning. Please proceed.

**Chris Dearth:** Thank you. I'm chris dearth, the city's measure 37 program manager. I'm here to present a claim brought by gary dye on his property in southeast Portland. It's located in the pleasant valley neighborhood. This aerial photograph shows you the property in the center there outlined in red. You can see this was taken two years ago before construction on the property. The area was heavily forested, you can see it's zoned r-10c, that's an environmental conservation zone. And it's bordered on the south by the willamette national cemetery, which is zoned open space. To

**March 1, 2007**

summarize the claim for you, it's brought by gary dye at southeast lexington and 120th avenue. Submitted in december of last year, compensation demanded is \$168,000. The preferred resolution is compensation or waiver of the challenge, by regulations. As you recall, our analysis of measure 37 claims include these six criteria. I won't go through them, you've seen them many times before. First the ownership, gary dye first purchased his subject -- the subject property in september of 1994. He then sold it to his father, just two years later in 1996. And purchased it back three years later in 1999. So for purposes of this claim, the family ownership dates back to september 1994, and gary dye's current ownership dates to september of 1999. The regulations challenged by mr. Dye are these, in his words, the environmental zone restrictions, enforced stewardship of the undisturbed area, the city's prohibition of a fence, the city's prohibition of security lighting, the city's environmental review fee. The city's additional delays in processing site fee and building permits, the city's requirement for extra storm water management, the city's restriction of landscaping to native plants exclusively, and as he alleges, the pain, suffering, and anxiety that he states he has endured. So next we look to see whether these regulations are land use regulations as defined by measure 37, and we find that only the environmental zone regulations are land use regulations under the measure. But those include the four items you see here. The stewardship of the undisturbed area -- undisturbed area, the prohibition of a fence, the security lighting, and landscaping of native plants. Those are all part of the environmental zone regulation and are land use regulations under measure 37. The other items that you see here, the environmental review fee, the delays -- alleged delays in processing site fees, the -- and the city's requirement for storm water management, are not land use regulations under measure 37. So aren't subject to challenge under the measure. And then finally, pain and suffering are not covered under measure 37. Just to give you a little background, gary dye did file a previous measure 37 claim prior to this one in december of 2004. B.d.s. staff worked extensively with mr. Dye over a period of month, including four site visits to work through development issues with him. Resulting in the approval of an environmental review on september 9, 2005, to construct a house. This is the environmental review that mr. Dye received in september of 2005. And that is sufficient evidence of enforcement under measure 37. It's worth noting that mr. Dye did not appeal the decision, the environmental review decision at the time to luba as was his right. In fact, he was so happy with that environmental review, that he wrote me this nice letter in september of 2005, saying, "i wish to withdraw my claim" -- this was the previous claim for measure 37 compensation "the city and I have reached a good compromise and understanding for the use of my property through the environmental review process. I considered any disagreements I had with the city over the use of my land a thing of the past. I look forward to my stewardship of my property as set forth in the zone in which it sits." he further states in his letter that he was very pleased with the assistance he received from eric engstrom and others at b.d.s. Then later he was issued a building permit in august of 2006 and construction commenced. It's still as far as I know underway on this property. And he filed his second measure 37 claim, that's the one before you today, in december of last year. Next we look to see whether the regulations that are challenged are regulations that are exempt under measure 37. Under section three the act states that the act shall not apply to land use regulations which are enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owns the subject property prior to acquisition by the owner. So we look back in to the zoning maps in place prior to when mr. Dye purchased this property. That's his property, it's hard to see, it's in yellow or green there on the right side of the zoning map. This map you can see is dated from august of 1991. You can see that the zoning in place in 1991 was r-10c, conservation overlay, the same as it is today. Mr. Dye purchased the property four years later, in 1994. This is a warranty deed showing that purchase date in september of 1994. This was his original purchase. So he first purchased it three years after the regulations were enforced on the property, and then when he purchased it -- repurchased it the second time in 1999, that was eight years after the

**March 1, 2007**

regulation was in force on the property. So in conclusion, what with found was that mr. Dye -- what mr. Dye would be required to do on his property was established by council action adopting the environmental overlay in 1991. The requirements have remained essentially the same from 1991 through purchase in 1994, through repurchase in 1999, and remain in place today. So because the challenged e zone regulations are exempt from measure 37 challenge this claim, we find there's been no restriction of use or reduction in value in the property. So to summarize, the entire claim discussion here, we find that the environmental zone overlay requirements are indeed land use regulations under measure 37. The e zone was enacted in 1991 prior to mr. Dye's first purchase of the property three years later. Therefore, the e zone is exempt under section 3e of the measure. And because the e zone challenge is exempt we find there's been no restriction of use or loss of value of the property. So our recommendation to you today would be to deny mr. Dye's measure 37 claim. I'd be happy to answer any questions if you have any.

**Potter:** Questions from the commissioners? Thank you, chris.

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

**Potter:** The claimant please come forward? Thanks for being here today, folks. When you speak, if you'd state your name for the record, we'd appreciate it. You have a total of 15 minutes.

**Gary Dye:** Gary dye, owner of the property.

**Meagan Dye:** And i'm meagan dye. Co-owner of the property. And i'll start today. Mr. Mayor and commissioners, good afternoon. Thank you for taking the time to hear our concerns today. We were truly hoping to avoid bringing this claim before you. Let me start by saying gary and I love Portland. He's a lifelong resident, born and raised here. About 15 years ago I chose Portland as my home. We have a young son and are expecting another child late they're year and we look forward to raising our family in this city and we hope our children grow to love Portland and Oregon as much as we do. Some of the values we hope to instill in our kids are caring for the environment, compassion towards others, basic fairness, and respect for the rights of others. We are here today asking that the city support these same value was regard to our property in southeast Portland. When this property was originally purchased, it's true the e zone was in place, but the current restrictions were not. After filing an initial measure 37 claim, gary and I met with eric engstrom to see if a compromise could be reached within the existing environmental review process. After several meetings, we came to an agreement which requires that we preserve 5,000 square feet of the property as undisturbed as well as preserve a maple tree and douglas fir tree we originally wanted removed. Since reaching this land use agreement and beginning construction on the property, new circumstances have arisen which cause us great concern for not only our own safety but that of our neighbors as well. The doug fir sits on a ledge and roots have been exposed over time prior to our construction. Our neighbors have expressed concern about this tree as their house sits in its direct path should it come down. Upon inspection, even the city forrester could not ensure its viability. Our neighbors deserve to live in their home without the threat of a huge tree falling on their house and we feel a responsibility to remove the tree as the only way to guarantee their safety as well as the safety of anyone else who may be passing by or have a car parked in the tree's path. Another safety concern we have is for the undisturbed 5,000 square feet at the back of the property. It has come to our attention that groups of kids have been making trails through the woods and have even constructed a primitive campsite, including a fire pit, on the federal property that lies to the south. The fire department has been called on more than one occasion because of these fires, and the retaining wall in front of our property has already been tagged once in retaliation for involving the authorities. The only way to keep trespassers from disturbing this portion of the property is to build a fence. If we keep these 5,000 feet undisturbed, we need the ability to keep the public off of our private property. We are one family. Building one home. We don't want to clear-cut our lot. We don't want to build a swimming pool or pave over everything. To create a parking lot. In fact, we've done what many other property owners would never agree to do. Essentially donate one-third



**March 1, 2007**

of our private property to the city while having to pay taxes on it and maintain it at our own expense. We're asking to cut down a tree that has the potential to cause extremely serious damage and to fence the lot to protect our private property from public trespass. Thank you for your time.

**G. Dye:** You might want to ask, why did I write that letter thanking these people so much for the compromises and the agreement we made two years ago? And the reason is that we really didn't know exactly what the effects of that agreement were going to be, and things have really changed in the meantime. At that time they were in the process of developing the deer haven development, basically across the street. We're not part of that development. We're a single lot. When we surveyed the property along with kim miller, there weren't very many people living there. And it was all wild and -- wooded and thickets and hard to get back through there. In the meantime, I believe with 36 houses built in the deer haven development, there's kids there and now they are partying back there. They have built trails through my property and through the willamette national cemetery to access this area, actually damaging our undisturbed area as well as willamette national cemetery. They've set up a campsite, they're lighting fires. I have pictures of the fire pit. I've talked to willamette national cemetery officials, and they're seeing vandalism on their property and stealing things within the cemetery and bringing them to this campsite. I think they're smoking pot. I hope that's maybe all they're doing. The fire department has been called out on numerous occasions to put out fires. My neighbors tell us of this, and the wild stuff is going on back there. So the fact that we agreed to have this undisturbed area without a fence, that would have worked back when we saw it two years ago. It doesn't work anymore. The solution from the bureau of development services is to plant thorny thickets and things like that. But thorny thickets have already been hacked away to put in these virgin trails. I have a picture of a hole they made through dense blackberries, which I couldn't get through two years ago. They've hacked through it, and now they have access to willamette national cemetery. So to think that putting -- planting thorny brush and shrubs in the middle of this trail is going to stop them from entering and leaving, and our property, and even disturbing our privacy, I don't think that's going to work. The other big issue is my wife mentioned, is that the bureau of development services insisted on three trees within the disturbed area that we were supposed to keep because they thought these three trees were valuable. I guess they were kind of big. We did remove quite a few trees for building of the house and the driveway, and we have in our mitigation plan planting of a bunch of trees to mitigate those that were cut down. But this one tree in front we found out is a problem. After those record rains in november and after the windstorms, the neighbors across the street, I can show you a picture of their house, they were scared. And they called up the city to complain about this tree, and we got a letter from the bureau of development services that says the city -- they wanted us to -- they required a complete arborist report including root excavation must be examined regarding the safety of the tree. And I called up an arborist, "how much does that cost?" "we bring in a compressor to blow the dirt off and do the roots, and we think it will be around \$700 or so." and then on top of that, if the arborist says, "yeah, it looks like that tree is unsafe, then I have to do another environmental review." and we're supposed to be grateful they dropped the cost to \$400 to accept that this tree needs to be cut down, and then I would file that in the county for \$60, and the thing is, we had just done that in the agreement two years ago. We went through the environmental review process. We paid all those costs. Can't we just realize that this tree, including this tree, was a mistake, and I will even mitigate for it. It's in the front of the yard, it is completely ice lated from any kind of ecosystem. What is the insistence to keep this tree? And the other problem is that in my building permit, I have to now put planter boxes -- the problem is on the north side of this tree is a very big ledge. The tree is leaning toward that ledge. This is what makes the people across the street very nervous. Ok, so there's a problem on the north side. My building permit says I have to excavate and put a storm water planter box on the east side, another storm water planter box on the west side, and I need to have a driveway turnaround, which I need to excavate within five feet of

**March 1, 2007**

that tree. So now all four sides of this tree, which people are already worried about, are going to be excavated. So when I ask the question in the letter to the b.d.s., do I need to hurry up, get this arborist report, file it with the city, so that if it's unsafe that I can cut it down now, but if the arborist says, it is safe, it is viable, i've got all this excavation to do the next few months. I do have to go through the same process again in four months and have a second environmental review and a second root excavation, and file a second thing in the county? They never did answer that question.

Because no matter how you answer that question, it looks kind of stupid. Either we are forced to put on hold public safety for the next four months as I finish my construction and finally go to the arborist and see if the tree is now viable, you know. I either put the public at risk in the intervening time, or else I do two of these things within four months, whereas I did one again two years ago. That was never really addressed. That whole thing was kind of dismissed. That doesn't -- that happened about one week before my filing, and that and other things, they were kind of bothering me, but I was living with it. But when I got that letter and I got that kind of response, I said, "this is the last straw," and I filed another measure 37 claim. It's really the only power I have to have people sit up and wake up and listen. Very apologetic about it, it's really embarrassing and disappointing for me and my wife to be here, but you know, the experience we've had since we made that agreement a couple years ago, year and a half ago, just kept bothering us. There's a couple of other issues about the storm water. I signed an agreement at the bequest of pdot when they were designing the deer haven development below me, they wanted me to sign off on lowering lexington so they could meet up better with 120th coming up the hill for connectivity reasons. Portland has a policy of connectivity. I signed off on that. The reason they wanted me to sign off on it is because when you lower the street, my lot is already up here above the street, and now it takes a lot more to get up to where i'm going to be building my house. My driveway is going to be much steeper and much longer to be below a certain grade. Ok, so I signed off on this. I didn't ask for anything in return from the developer or anybody else. But I thought in the environmental review it said that the properties along the south side of lexington were going to be served by these public utilities, including the storm water stuff. I bought in to that. Ok. So when I build my house now, I find out that i'm going to be putting in \$20,000 of excavation, digging out all that dirt to try to move it forward, and another \$20,000 of extra retaining walls to hold back the hill as I put in this long driveway. So now this driveway is so long, that it's more than 1,000 square feet. And according to the city of Portland's criteria, now I have to collect my storm water off my driveway in addition to my roofs, ok, I have to bear that extra cost. Well, I thought I was going to be able to channel my storm water to the curb and put it into the catch basin that the developer constructed for deer haven. And the bureau of development services says, well, no, you can't use that. Because that's for the deer haven development. So now I have to spend several thousand dollars, maybe even \$4,000-5,000 on two planter boxes, whereas i've only counted in the 36 houses that are in deer haven, i've only counted two houses that have put in planter boxes. One apiece. I've got to put in two. And because this tree sits really in the only place for planter boxes, I have to put in two rather than one. For the most part, doubling the cost. And I just don't understand why the bureau of development services has said you can't really use these facilities. The catch basin has a filter box, the house is on the end of lexington, our directly putting their storm water to the curb using that stuff, and all i'm saying, i'd like to use it too and save me these costs. I don't have anything against planter boxes. I do have something against the cost. There's a couple other small issues, and a lot of the things in the measure 37 claim when I came to the table in the last couple months talking with chris, they weren't even the subject of conversation. It's these small few issues that we really wanted to take care of, and we're very disappointed that there really didn't seem to be any budging of one inch on these things that we're concerned about.

**Potter:** Questions for these folks? I have one question for you, mrs. Dye. You said the current restrictions were not in place in 1991 when the environmental overlay went into effect.

**March 1, 2007**

**M. Dye:** It's our understanding that using the fence one is the one I have in my head, that went in place in 1995. Gary purchased the property in 1994. Correct?

**G. Dye:** Right. I bought the property knowingly as an environmental zone property. I really didn't understand -- know too much what that meant. The other thing was the 5,000-square-foot restriction -- disturbed area. I believe that -- I think that went in in 1995 and I think the fence restriction went in in 1997. Another thing that isn't environmental which really clashed with some of the other environmental restrictions was the snout house rule. The snout house rule came in in the late 1990's, and that really -- because of the difficulty of getting on top of this lot from the street, I wanted to zoom right in to basically the basic of the house and have my stuff on top. But because of the snout house rule, I couldn't do it. And it really ended up, I had to build a bigger house than I really wanted to to preserve the style I wanted, but to be able to have a garage.

**M. Dye:** And there's also, like the storm water management. We found that going through the deer haven had to go through an environmental review process as well, and when we've been comparing our storm water requirements to theirs, it's because the requirements were different. Is that correct? They were different when deer haven's was approved.

**G. Dye:** Apparently.

**M. Dye:** It's continued to evolve over the time the property has been owned.

**G. Dye:** And then so basically what they were saying is it's not really when these deer haven houses are constructed, like now that they have to conform to the rules and regulations that are in place right now, they actually have to conform to rules and regulations of when deer haven was incorporated in 1999. In our -- our argument was, ok, our lot is actually a continuation of the tamara heights development that started in 1971. So by that criteria we should be able to go back to the 1971 rule. But apparently that logic disappeared after I brought that up. Anyway, it's a little frustrating that we really couldn't negotiate some of these smaller points. And here we are.

**Potter:** Questions? Thank you. Chris?

**Dearth:** We don't doubt that many of these grievances are real, and troubling to the dyes at all. And staff have spent hundreds of hours trying to work things through facilitate the development process with them. The staff you see here are some of those who have worked with them in one aspect or another of their development. What we tried to do, we explained with all the claimants, certainly the dyes, we don't have the ability to change the law. We are there to help facilitate and implement the law as best we can. So we've negotiated with them to the extent that we have the flexibility and the power under the law, and some of the things that they are talking about we've tried to work with them and find workable solutions. And we're willing to continue to try to do that. I think for today's -- the point I would make today, though, is that these are grievances that are outside of measure 37, to us measure 37 covers the issues that I talked about, and we are willing to continue to work with them on a staff level, to try to work through these grievances to the extent that we have the power. But I think they have to understand as we try to explain to all the measure 37 claim apartments, we can't change the law or break the law for them. We can try to implement it, and we've been doing that for several years with the dyes.

**Saltzman:** They raised a point at the very end, I think Mrs. Dye, that the fencing and the 5,000 square feet came in --

**Dearth:** My understanding --

**Saltzman:** Not 1991?

**Dearth:** My understanding is the environmental regulations have stayed essentially the same since 1991, when the council placed the environmental zone on the property. There have been slight changes here and there. Mostly in process, actually to make the process more flexible.

**Saltzman:** Fencing and the preservation were not added subsequent --

**Dearth:** They were not added, no. If you want to go into the details, Eric Engstrom can explain the details of the process. If you want to talk about that, we can go there if you want. And we can give

**March 1, 2007**

you as much detail as you would like today. I was trying to keep the discussion focused on the measure 37 claim, which to us is pretty clear, and then try to work through these details with them on the staff level as we're able to. But if you'd like those details, we have the staff here to explain that to you.

**Leonard:** My first impression is that you're right, the issues raised aren't really related to measure 37. And I think whether they're intended to or not, I think the claimant acknowledged that, that he was frustrated with some of the regulation and filed a claim out of that frustration. But specifically I was curious about the tree issue.

**Dearth:** We can give you a lot of detail on that too. We have -- in fact kim medicaller -- miller and eric engstrom have both worked on the tree issue. There are ways for them to cut down the tree immediately if it present the ---- presents --

**Leonard:** That's what I wanted to ask, is -- do our staff have the capability of making a judgment whether a tree is safe or not without having to go through an expensive process? Do we have a process whereby --

**Dearth:** There is a process, but somebody else needs to explain that, because I don't know exactly -  
-

**Potter:** Can they come up? Also, chris, about the fence. Just explain to me why they can't have a fence there.

**Dearth:** The intent of the law, i'm certainly not an expert on this, but my understanding is the intent of the environmental zone is to try to preserve the resource as well as we can for wildlife and natural areas as much as possible. We try as mrs. Dye explained to facilitate the building of natural fences when that's possible. We understand that there are problems with this. We'll try to work that out as best we can. But that's the intent, to try to keep this area natural to protect the resources as best we can in a natural way.

**Potter:** It appears there's another wildlife that snuck in.

**\*\*\*\*\*:** I'm sure that's true. We don't doubt that at all.

**Sten:** Could I ask a question to help frame the question you're about to answer? We haven't ruled yet on our view of the measure 37 claims, there's still some room to have some discussion. I guess the question i'd like to ask is, when you're talking about the specifics of the regulations, I think it's the correct argument that you're giving to the applicant that you can't and should not attempt to change the law when you're reviewing it, the council can modify conditions and has a little more leeway than the staff would, particularly in a disputed claim like this. So I guess what I would be looking for is, in your opinion, are there some things in there that perhaps as part of ruling on this claim we could give some leeway on without hurting the intent of the rules? Or is it your opinion that the rules as they're interpreted are having the right result and we've got to stick to that? Slightly different question than do, they have a measure 37 claim.

**Dearth:** Well, with regard to the fence, i'm not qualified to answer that, because there's far more to it than I understand. There have been years of research and staff work gone into this, and that's encompassed in the environmental zone protections that you passed. So I can't speak to that right now. Maybe there are with regard to the tree issue, i'm not sure.

**Eric Engstrom:** My name is eric engstrom, i'm a supervising planner with the bureau of development services. And I was involved with the environmental review process that mr. Dye went through. I'm going to try and shed some light on the tree question, then before I do that, I wanted to mention one thing about the question of which regulations came in when, and see if I can help clarify that. The -- when the environmental zone overlay was first created, the only avenue to get approval for development in that overlay was through discretionary environmental review. It was later subsequently that the second track was added which composed -- which was -- which included the development standards which essentially said if you can meet these standards, you don't have to go through that first track. So at the time of ownership of the initial purchase in this

**March 1, 2007**

case, the rule was that the -- any development on the property would have required discretionary environmental review. Mr. Dye subsequently has gone through decision correctionary environmental review and that's the basis of the building permit the bureau issued. So from a measure 37 point of view, the same rule were applied, same basic rules were applied today to his permit that would have been applied had he applied for the same permit when the purchase at the original purchase date. Yes, there were certain standards and other procedural simplified processes added to the environmental overlay subsequent to that ownership, but those essentially amount to additional exceptions that get you out of environmental review. And those don't amount to restrictive standards in that sense. So with that sort of broader look, the fence issue is -- the fence standard is one of those standards that was subsequently added prior to the fence standard existing, a fence would have required environmental review. After the fence standard was added, fences that meet the standard don't require environmental review. Other fences may be applied for or may be requested through environmental review still. So that's kind of the nature of that standard and why it's being discussed here. The --

**Potter:** When was that added? What year?

**Engstrom:** It was added I believe in 1995. That -- I believe that's what Mr. Dye is referring to. But again, the city's regulations required discretionary environmental review for anything prior to that, and so the addition of that standard basically amounted to a loosening of the rules by saying we won't review certain fence ifs they're fairly straightforward.

**Saltzman:** That means they're not absolutely prohibited from a fences, they just have to go through environmental review?

**Engstrom:** That's right. And that's -- that remains a viable option. The -- you asked the question about the trees. The current code does include exemptions for trees that are immediate hazards, and the bureau of development services has let Mr. Dye know if it is an immediate hazard the tree can come down immediately. We're not going to be the ones standing in the way of -- or requiring a hazard to remain if that's the case. What our advice was was that because this is an environmental overlay and that tree was part of the adopted tree preservation plan, our advice was, have an arborist look at it, because having that arborist look at that protects him from anyone else out there alleging that there's a violation from him removing that tree.

**Leonard:** My question was, don't we have the tools to look at it and determine -- conclude that it might be a hazard?

**Engstrom:** We -- I'm not an arborist, but we can do that. We don't generally make those determinations for -- as part of private building permit requests. The city forester can generally restrict their activities to looking at street trees and trees in parks. So we -- for various reasons, liability and such, we generally try to avoid making determinations about trees on private property.

**Potter:** It was advice?

**Engstrom:** If the tree is a hazard, it can come down.

**Saltzman:** It has to be determined by an independent arborist?

**Engstrom:** No, we're just saying if somebody alleges later that that tree was illegally taken down, it's a good idea to have had an arborist look at it to have that in writing so you have a defense, because otherwise we can't tell whether it was just a violation of the e zone later if someone makes that allegation. Or if it was a hazard. Our standard advice is work with an arborist. We're not making it a requirement of tree removal to do that if it's a hazard.

**Leonard:** I'm just trying to get to the place where both sides agree it's a hazard. If you don't hire an arborist how do you agree that it hasn't been taken down improperly? Because he says it was a hazard.

**Engstrom:** Right, if it comes down tomorrow and we get a through a third party someone complains that a trees been taken down without proper permits then we have to figure out what

**March 1, 2007**

happened and to the extent that an arborist was involved and that he had an arborist look at it that helps us find in his favor that there's no violation.

**Leonard:** That kind of gets me back to my original question which was if there may be a process whereby we have to determine it was taken down properly or not why wouldn't we have somebody go out towards taking down and say okay that looks like it could be a hazard and say we --

**Engstrom:** And we've essentially done that the city foresters taken a look at it from a windshield surveyed having gone by the site and said yeah it could be a concern and we recommend that's why the recommendation for a root exploration came from was from the city forester.

**Leonard:** Let's say based on that, just that informal kind of observation, they took it down and somebody complained. Would they be able to say, yeah, but the forester looked and said it could have been a problem and therefore giving the benefit of the doubt?

**Engstrom:** We could do that but with all land use there's a procedural process of appeal and we are not the final decision maker on that.

**Potter:** What happens if someone complained about that? What's the worst thing that could happen to these folks?

**Engstrom:** Environmental violation for not complying with a conditional approval from the land use decision.

**Potter:** But in retrospect, how would you know? The tree is gone.

**Engstrom:** We would, we would be responding to a complaint from a third party that the tree came down without --

**Potter:** Is there a burden of proof to show it wasn't dangerous?

**Engstrom:** In this case, the tree is part of an approved tree preservation plan adopted through a land use procedure. So there's been a process of neighborhood notification and public decision-making about which trees to preserve on a site. And our job at this point, at b.d.s., would be to implement that tree preservation plan so we're -- we would be asking for -- when there's active development going on, on a property, and a tree comes down, generally, our request would be to the developer, the contractor is, what happened to that tree? If we, if we were to say, to put the burden of proof on the neighborhood to prove that it wasn't a hazard, the neighborhood would have the right to appeal that determination. And we don't have a control over where that goes. So generally, we try and make a best case guess as to what we think is going on there when we make that decision. I want to stress, these are issues we are happy to continue working on with this applicant. This is not a measure 37 discussion. Because it is a regulation predates the ownership.

**Leonard:** I said that and I think it almost sounds to me like all parties have stipulated to that. But the hard part is with like, this isn't decisions on trees and I certainly understand your conservative approach, not wanting to take a position that could end up coming back to haunt us. On the other hand, sometimes something like that is actually not as complicated as it appears. And you can look at it and not being an arborist and go, yeah, I can see in a wet climate and a good wind that might come down and go this way. I'm wondering why we can't just say, not necessarily even talking about that tree, but in instances like this, have some process where we go that could be a problem so we are not going to take a chance. If you want to take it down, take it down.

**Engstrom:** It could be a problem. It's not so clear cut to me that it's a problem that we've gone there yet. We --

**Leonard:** I'm just saying if we are the city and we are the ones that are going to enforce against a rule being violated why can't we in advance say this would violate the rule?

**Engstrom:** We can do that if we think we have enough evidence to -- to safely stand behind that. We also have a responsibility to ensure trees aren't coming down for no reason and there's a public interest, we are trying carry forward in preserving tree canopy in that neighborhood because of the Johnson Creek flooding issue.

**March 1, 2007**

**Leonard:** Which is why I am saying you, in advance, take a look at it and just kind of instinctively --

**Engstrom:** Which is what we have done by having the city forester drive by and take a look and at this point, where we were at was, it could potentially be but we don't know yet.

**Leonard:** Wouldn't know until it fell.

**Saltzman:** Have an arborist come and do a more detailed look?

**Engstrom:** Right. That's what we've recommended is that somebody look at it.

**Saltzman:** If an arborist gave an opinion this is hazardous or dead then it could be felled with no consequence or no potential of somebody making a third party complaint that would be substantiated?

**Engstrom:** Right. I think the reason we didn't go in that direction is we didn't get a clear statement from our city forester it was an immediate hazard. And there have been situations where the city forester has said to us, this is a hazard and when we get that clear message, we can act on that. We didn't get that clear of a message in this case.

**Potter:** Maybe if the windshield obstructed his view. If he got out of the car he would have a different opinion.

**Sten:** Could we -- I want to just get back to my question because I think it's, for whatever reason, you know, i'm not saying you guys did anything wrong. Both sides have sort of, for one reason or another, made the decision this is worth putting this in front of us. We had an agreement you worked out. It's well known the council likes to work through these things on measure 37 and that we have been trying set a precedent when at all possible we like to mediate measure 37 claims because we are trying -- and also we will litigate anything that's not right because we have been trying to send a message to property owners that we get the law, we are going to enforce it. It was passed. And we are going to try and make it right but we are not going to stand up to frivolous claims. Maybe rephrase my question, this seems like one that should be worked out at the staff level. I would be happy to ask the forester, you know, if the parks commissioner agrees, to go out and study it on our dime and come to a conclusion or something so that I mean, we have got a couple here who is working pretty hard I think to try to get this thing right. I am not saying they haven't dug in and gotten stubborn. I'm not saying that but, gosh, I don't want to pay the \$700. We got, you know, the forester who said, hey, it probably is, probably is bad. You guys are saying, you haven't proved it. Just to be blunt I think this one needs a little work here, chris --

**Dearth:** Ok. We will certainly --

**Sten:** To come to a conclusion. We can toss it if you want but it's not the style of what we are trying to do here.

**Dearth:** Absolutely. That's always our first intent also. And we are right now working with several dozen claimants who have put their claims on hold to allow us time to do that but at a certain point, if the claimant decides not to put their claim on hold, we are obligated under the 180-day rule to bring it to you to avoid further liability to the city. And that's why we brought this to you today. And in some ways i'm sorry that we had to because I think you are right. This should be worked out on the staff level. And I believe we have done everything we can and will continue to do that to try to work it out. And we will do that.

**Potter:** I would like to ask two questions. First dealt with an issue the rest of the development had a different standard in terms of storm water runoff than this property.

**Dearth:** The deer haven development?

**Potter:** Yes.

**Dearth:** There's a representative from b.e.s. who can speak to that. I am not qualified to.

**Lana Danaher:** I'm lana with bureau of environmental services. Deer haven actually came under the -- I believe it was the 2002 storm water managed manual. We have a 2004 version. The difference is pretty slight except for the storm water disposal hierarchy that was a result of

**March 1, 2007**

negotiations with e.p.a. and d.e.q. that gives preference to on site infiltration through vegetated facilities such as storm water planters. Other than that, it's pretty much the same. It's applicable here because of the long driveway, is I believe he said 1,000 square feet. I frankly did not recall what the square footage was. And, of course, our city policy is that storm water is managed on site. It can be disposed of offsite once it's been treated and detained. If they cannot dispose of it on site and so you do see some of the sites in deer haven, for example, who have used a variety of things, from planters, soakage trenches, I think there was a storm ceptor and overflow to the street. So there was some of that. I am not sure which lots he looked at and which ones he didn't but there was quite a mixture in deer haven. I believe there's a pond was built for the streets that includes the street in front of his house. And it was built for street flow, and incidental overflow. It was not sized for additional flow from individual lots. Having said all that, we do have what's called a special circumstances process. If it's not possible, not feasible for him to get planters in for that driveway, he can ask to do an offsite managed fee and we can look to see whether the additional flow could be handled. He has not applied for special circumstances. I don't know that it would be approved but it's possible.

**Potter:** In terms of the facts, just my last question, I would like to find out, you said that in most instances an owner could build a fence but if there was some variance, then, they had to go through some process.

**Engstrom:** Yes. The fence is allowed, the current rules the fence is allowed within the approved disturbance area only and I believe the issue here is that the fence, that mr. Dye would like to put in extends into the portion of the property that was designated to remain in a natural state. The fence, you can request a fence through environmental review and my understanding is mr. Dye is presumably objecting to the procedural and time expense of going through that process. That's the same process that was in place when he purchased the property for a fence. What I heard today about some of the fire issues, I would be willing to talk with him about some other ideas I have about how we may deal with the fence if it's an immediate fire hazard and we can get someone to assess that there is a possibility we could put up a temporary fence to try to interrupt the situation without going through environmental review. That's something we are willing to talk about. That's one option.

**Saltzman:** Can you give me a cost of an environmental review?

**Engstrom:** I believe the council lowered that cost last year at subsequent to measure 37 going into effect to try and entice more folks to go through that process. But I think it's around the order of \$1,000 for that review right now.

**Saltzman:** I mean getting the -- commissioner Sten has been talking about -- I don't agree this is a legitimate measure 37 claim but nevertheless there's some real concerns here. We might have discretion to address such as waiving environmental review.

**Leonard:** But -- and nobody likes to find compromises on these more than I do. I appreciate that. But this is a standard review that was in place had the property was purchased. And this is not an unknown regulation. It's a fairly standard, I think, approach, having some experience myself with environmental zones. It's not, it is not -- sheen be a surprise to anybody you can't fence off one of those areas.

**Saltzman:** I'm thinking about the change in the use over time of the back of that property. Obviously --

**Leonard:** But I need hear a little bit more about that, too. I am very familiar with this area. That's not a phenomenon that I am at all aware of. I walk through this area quite a bit and I am happy to be proved wrong but there may have been something here and there but this is not an area that's known to have roving gangs of kids in the woods building bonfires by any means. But i'm open, if somebody has some evidence that i'm completely wrong on -- I am willing to listen to that but that's definitely, this is first I have ever heard of anything like this.



**March 1, 2007**

**Potter:** I agree with commissioner Sten in the sense that the staff could work more with the owners to figure out if there are some other solutions. But i, like a couple other folks, could not feel that this rises to the level of a measure 37 claim. So some other mechanism has to be in place to bring about some reasonable effort to work with -- and I think it's incumbent upon the claimant in this case, too. Any further questions?

**Leonard:** I just want to be real clear because this is the staff that I am assigned to work with a lot. So I don't want them to get the wrong message from this. I mean, I agree, and I have worked with the b.d.s. staff to think in terms of solutions, where they have issues that they can make an independent judgment about, they have the authority to do that. On the other hand, I don't want to send a message that measure 37 might be a tool some did can use that are mad about regulations in order to get some relief where other processes don't work. We have to find a balance. And i'm -- I am concerned about the tree approach. I think I was actually thinking we need to talk more about how we can internally maybe have a more expedited process that doesn't involve hiring consultants. On the other hand, I really am concerned about sending a message that we would use measure 37 as a tool to have the council relax rules that really are -- should be fairly well understood and have been in place for some time. So I know there's a balance there and there's some judgment there. I just don't want staff to think that we're saying somebody files a measure 37 claim and they want to build a fence and they weren't allowed to somehow they are going to circumvent that regulation to build a fence. That's not fair to the community order neighbors. I would argue the claim -- there's a balance here. And i'm sensing like the rest of the council that we could do a little better job in some particular areas and helping achieve that balance. But on the overall claim, i'm just not -- i'm not persuaded. A lot of what's being asked of us. And the council -- the staff is working very hard on this. I know they are. And I appreciate what they have done. For a balance to find. But I don't want to walk out of here with the message that you're not happy with the regulation, you can file a measure 37 claim or we're going to waive it.

**Sten:** I'm not saying that at all. I am saying that -- as somebody whose voted for almost all these regulations and fully owns and supports them, that they are not cleverly crafted to fit every, every lot nor can they be. And so what I was trying to ask is that in this situation, in which I think a good work, there seems to be good faith on both sides and the gap on evidence is relatively small, is it appropriate for the council to exercise a little bit of judgment and create some goodwill? I wouldn't do that -- which is why I asked the question chi heard you weren't prepared to answer and I am totally fine with that -- of in your opinion as opposed to, you know, exactly the way this thing works on environmental zone, do you see any room to work on this? It's just if both sides have been working on this for years, and somebody actually has an opinion that may be the exact reading of the fence law in this environmental zone doesn't exactly do what it's supposed to do on this lot, I would be open to using the power of the council which doesn't happen very often to craft a compromise and it would not scare me I was going to send the wrong message because it was only if you guys thought we weren't able to solve it and I have not seen a preponderance of sort of good faith claims in front of us. I don't fear this happening a lot, that so I guess that's where i'm coming from. I don't want in any way to be interpreted to be sending a message to the team that's any different than yours. You shouldn't -- I was really more trying to say, if you had a little more leeway which you don't have, is there some way you could solve this problem and that it's not benefit available to you yet that perhaps would be available to us as part of settling a claim?

**Engstrom:** To answer the question --

**Sten:** Can we put the fence somewhere that would work and get this done?

**Engstrom:** To answer the general question about how much leeway do you think I have, I think the leeway we have here is or rather I think the sticking point we have here that is the procedural issues. There are ways and arguments that can be made to get to a place where there's a fence on this property and where this tree is recognized as being a hazard and it's allowed to be removed.

**March 1, 2007**

Those are with certain sets of facts and discoveries, we can get to that point. The issue I think here is that those involve process that are in place. And those processes for better or worse take time and are expensive.

**Leonard:** I don't want to sound like i'm flip-flopping here but again, I think we have the ability to exercise some judgment at times as to whether or not to employ all those processes. It involves us sometimes taking position that is sometimes uncomfortable because we're actually maybe taking a position we have to defend, in the instance of the tree. We looked at it. We made a judgment that it could be a problem if neighbors have complained and they are concerned and it's -- ok. Mitigate it by planting something else on the property that can take it down. Those kinds of things, I think we have the ability to do. On the fence, again, i'm -- I wouldn't want to do anything that wouldn't be allowed to anybody else. I guess what i'm asking for is the same approach we would take with anybody on any permit to do anything is what we will do here and not extraordinary because it happens to be a measure 37 claim.

**Dearth:** Ok. I think I understand what you are saying. You don't want us to undermine the enforcement that we make on these kinds of regulations across the board, but you want us to try to look at particular situations and use our judgment and flexibility to the extent that we have that in the law. And I suppose if we judge at some point that we don't have that, how are we -- or some way we will have to go back to the council and say, this law doesn't give us enough power. We need to look at changing that.

**Leonard:** Yeah. I guess I don't know that i'm actually speaking so much to your measure 37 process.

**Dearth:** Right.

**Leonard:** A case by case basis. Maybe you are right, maybe b.e.s. As well, maybe we should allow to you have your drainage go and make sense to do that. I just fear some time and I have worked in this area enough, I have been concerned occasionally we find ourselves enforcing a rule because of what the rule says, not because of the intent the rule is trying to -- are we thinking in a way that's creative enough that we're not hung up with the rule says and not using our best judgment and applying it?

**Dearth:** Yeah. Let me assure you we are doing that on all the measure 37 claims where the claimants will talk to us and give us the time, flexibility to do that. We have several dozen on hold right now where we are working with the claimants to try to work out solutions. I'm confident we will be able to work out solutions on many of those. Not all of them but many of enemy. There will be some we have to bring to you where we can't come to a solution, where we don't have the time in the 180 days, those kinds of things. Those are what measure 37 requires us to do.

**Potter:** I think we understand that. I know that everybody obviously by the number of staff involved in this is that they have spent a lot of time on it. I think, my perspective is I am going to vote to deny the claim but on the other hand, ask you folks to -- and the owners, to take that extra step.

**Sten:** Are there additional fees that they need to pay for this next round of reviews?

**Engstrom:** If we proceeded through the various avenues that are in the code, to amend the process, yeah, there would be an environmental review fee.

**Sten:** What's that fee, roughly?

**Engstrom:** I believe we have already indicated our willingness to reduce that fee to mr. Dye, given the circumstances and the investigations that we've already done on the site, based on the fact we would have a reduced cost. So I can't remember the exact figure.

**\*\*\*\*\*:** Oh, it was \$400 was the reduced fee.

**Saltzman:** From \$1,000?

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

**Engstrom:** The review would be fairly narrow in scope to clean up these issues.

**March 1, 2007**

**Sten:** Given that it would not be a major hit to the bureau's budget, I would be willing to waive the fee on that review as kind of a sign of goodwill from the council and move to -- I would make a motion to uphold the staff, deny the claim and waive the fee on the necessary environmental review for it to continue to work towards a compromise.

**Leonard:** Second.

**Potter:** Discussion? Call the vote.

**Leonard:** Aye.

**Saltzman:** Aye.

**Sten:** Good luck, everyone. Aye.

**Potter:** Aye. [gavel pounded] we are adjourned until next week. [gavel pounded]

At 3:10 p.m., Council adjourned.

