



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **26TH DAY OF MARCH, 2008** 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; Ben Walters, Senior Deputy City Attorney; and Ron Willis, Sergeant at Arms.

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

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<b>380</b> Request of Thomas Edward Mullen to address Council regarding getting help for all kids in Oregon (Communication)	<b>PLACED ON FILE</b>
<b>CONSENT AGENDA – NO DISCUSSION</b>  <b>Mayor Tom Potter</b>  <b>Office of Emergency Management</b>	
<b>*381</b> Authorize contract with CH2M Hill, Inc. to develop the Portland Evacuation Annex and associated appendices in the amount of \$199,749 (Ordinance) (Y-5)	<b>181687</b>
<b>Office of Management and Finance – Business Operations</b>	
<b>*382</b> Pay claim of Zaldy Macalanda (Ordinance) (Y-5)	<b>181688</b>
<b>383</b> Authorize an Intergovernmental Agreement with the State of Washington Department of Printing to procure print services and printed supplies (Ordinance)	<b>PASSED TO          SECOND READING          APRIL 2, 2008          AT 9:30 AM</b>
<b>Commissioner Sam Adams</b>  <b>Bureau of Environmental Services</b>	

**384** Authorize a contract and provide for payment for the construction of the  
Wellhead Sump Retrofit Project No. 8772 (Second Reading Agenda  
359)  
(Y-5)

---

**181689**

**March 26, 2008**

<b>385</b> Authorize a contract and provide for payment for the construction of the Taggart Sewer Rehabilitation and SW Mitchell St and I-5 Sewer Rehabilitation Project No. 6920 (Second Reading Agenda 360)  (Y-5)	<b>181690</b>
<b>386</b> Authorize Grant Agreement with Friends of Zenger Farm to support their mission to provide environmental education and promote environmental stewardship, sustainable food systems and local economic development through a working urban farm (Second Reading Agenda 361)  (Y-5)	<b>181691</b>
<b>387</b> Authorize grant application for up to \$25,000 for Columbia Slough Confluence Habitat Enhancement Project to the Lower Columbia River Estuary Partnership (Second Reading Agenda 362)  (Y-5)	<b>181692</b>
<b>388</b> Authorize grant application for up to \$100,000 for Tryon Creek Confluence Habitat Enhancement Project to the Lower Columbia River Estuary Partnership (Second Reading Agenda 363)  (Y-5)	<b>181693</b>
<b>389</b> Authorize grant application for up to \$150,000 for Columbia Slough Confluence Habitat Enhancement Project to the Lower Columbia River Estuary Partnership (Second Reading Agenda 364)  (Y-5)	<b>181694</b>
<b>Commissioner Randy Leonard</b>	
<b>Water Bureau</b>	
<b>390</b> Authorize a contract with CH2M Hill, Inc. for on-call professional services (Ordinance)	<b>PASSED TO SECOND READING APRIL 2, 2008 AT 9:30 AM</b>
<b>Commissioner Dan Saltzman</b>	
<b>Parks and Recreation</b>	
<b>391</b> Authorize a purchasing process for parcels acquired with 2006 Metro Open Spaces Bond Measure 26-80 funds (Ordinance)	<b>PASSED TO SECOND READING APRIL 2, 2008 AT 9:30 AM</b>
<b>Commissioner Erik Sten</b>	
<b>Fire and Rescue</b>	
<b>*392</b> Authorize Intergovernmental Agreement with Portland Community College for Pre-Hospital Trauma Life Support training (Ordinance)  (Y-5)	<b>181695</b>

**March 26, 2008**

<p><b>*393</b> Revise ordinance to change the number and type of vehicles to be purchased with donation funds (Ordinance; amend Ordinance No. 181598) (Y-5)</p>	<p><b>181696</b></p>	
<p><b>*394</b> Accept \$258,145 supplemental grant from the Department of Homeland Security for Portland Fire &amp; Rescue for City Metropolitan Medical Response System (Ordinance) (Y-5)</p>	<p><b>181697</b></p>	
<p><b>REGULAR AGENDA</b> <b>Mayor Tom Potter</b></p> <p><b>Office of Management and Finance – Business Operations</b></p> <p><b>395</b> Authorize contract with McBride Architecture, P.C. for \$167,000 for architectural and engineering services to restore exterior envelope of The Portland Building (Ordinance)</p>		<p><b>PASSED TO SECOND READING APRIL 2, 2008 AT 9:30 AM</b></p>
<p><b>Office of Management and Finance – Purchases</b></p> <p><b>396</b> Authorize a contract with New Horizons Communications, Inc. for construction of the Council Crest Park Tower Replacement Design-Build Project (Purchasing Report – RFP No. 107853 )</p> <p><b>Motion to accept the Report:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-5)</p>		<p><b>ACCEPTED PREPARE CONTRACT</b></p>
<p><b>Commissioner Sam Adams</b></p> <p><b>Office of Transportation</b></p> <p><b>*397</b> Authorize the Portland Office of Transportation to enter into a contract with Max J. Kuney Construction, owner of the old Sauvie Island Bridge, to acquire and relocate the Sauvie Island Bridge center span to NW Flanders Street over I-405 (Ordinance)</p>		<p><b>RESCHEDULED TO APRIL 2, 2008 AT 9:30 AM</b></p>
<p><b>398</b> Vacate a portion of SE Washington St east of SE 30th Ave subject to certain conditions and reservations (Second Reading 373; VAC-10037) (Y-5)</p>	<p><b>181698</b></p>	
<p><b>Commissioner Randy Leonard</b></p> <p><b>Bureau of Development Services</b></p> <p><b>399</b> Amend Property Maintenance Regulations to reflect changes in application and policy, repeal outdated provisions and add new provisions to address chronic offenders (Second Reading 379; amend Title 29) (Y-5)</p>		<p><b>181699</b></p>

March 26, 2008

<p style="text-align: center;"><b>Commissioner Dan Saltzman</b></p> <p style="text-align: center;"><b>Parks and Recreation</b></p> <p><b>*400</b> Amend Lease Agreement with Verizon Wireless, LLC for continued use of Portland Parks and Recreation property above the Vista Ridge Tunnel for wireless communication purposes (Ordinance; amend Contract No. 50209)  (Y-5)</p>	<p style="text-align: center;"><b>181700</b></p>
<p style="text-align: center;"><b>Commissioner Erik Sten</b></p> <p style="text-align: center;"><b>Bureau of Housing and Community Development</b></p> <p><b>*401</b> Assign management responsibility for the Housing Investment Fund to the Bureau of Housing and Community Development and update the policies for use and administration of the fund (Ordinance)  (Y-5)</p>	<p style="text-align: center;"><b>181701</b></p>
<p style="text-align: center;"><b><u>FOUR-FIFTHS AGENDA</u></b></p> <p style="text-align: center;"><b>Commissioner Erik Sten</b></p> <p style="text-align: center;"><b>Motion to Suspend the Rules to hear the Four-Fifths item:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-5)</p> <p style="text-align: center;"><b>Portland Development Commission</b></p> <p><b>401-1</b> Approve nine additional Limited Tax Abatements for Single Family New Construction from January 1, 2007 to December 31, 2007 (Resolution)  (Y-5)</p>	<p style="text-align: center;"><b>36596</b></p>

At 9:57 a.m., Council recessed.

**March 26, 2008**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **26TH DAY OF MARCH, 2008** AT 2:00 P.M.

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

Commissioner Adams arrived at 2:06 p.m.

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

<p><b>402 TIME CERTAIN: 2:00 PM</b> - Appeal of East Columbia Neighborhood Association against the Hearings Officer's decision to approve the application of Howard Brandwein and Jeri Geblin for a Zoning Map Amendment to change the base zone from RF to R10 in conformance with the Comprehensive Plan designation for a site located at 9801 NE 13<sup>th</sup> Ave (Hearing; LU 07-140167 ZC)</p> <p><b>Motion to deny the appeal and uphold the Hearings Officer's decision:</b> Moved by Commissioner Sten and seconded by Commissioner Saltzman (Y-4; N-1, Leonard)</p>	<p><b>Disposition:</b></p> <p><b>APPEAL DENIED</b></p>
--	--

At 3:34 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

**March 26, 2008**

**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 program. The text has not been proofread and should not be considered a final transcript.]

**MARCH 26, 2008 9:30 AM**

**Potter:** Prior to the official beginning of the council meeting, each week I ask a question of the audience and the folk whose watch on television, the question: How are the children? We know, when communities take care of their children, the community is better. Each week we have someone come in and talk to us about issues that are important to them. They all happen to be children or young people. This morning we have madeleine monlucks. She's in the second grade at glencoe elementary. Over the last several months, she has volunteered cleaning Oregon beaches. She took part in a community clean-up and helped out at the ronald mcdonald house. Madeleine realizes the importance of helping others in giving back to the community that's been so good to her. Madeleine, could you please come forward? This is madeleine and dad. Thank you for being here. Tell us what you'd like us to know.

**Madeline Monlux:** Good morning, ladies and gentlemen. My name is madeleine monlucks. I'm miss Portland for national american miss. I'm seven years old, and I am in the second grade at glencoe elementary school. One thing that makes my school so special is all the parent volunteers. They help out in the classrooms and also to raise money for art, music class, and even our librarian, emma. Throughout the national american miss pageant, I myself have learned the value of volunteering. I chose to get involved with beach cleanups, because the beaches are my favorite part of Oregon. I cleaned up at newport, seaside, and cape meares. I also was involved with a community cleanup for the city of tigarard. I pulled weeds, raked leaves, and picked up garbage. I love Portland because it's clean and the people are nice. Thank you, mayor Potter and city council, for letting me speak to you today. I appreciate the opportunity, and I look forward to being a good ambassador of Portland.

**Potter:** Madeleine, are you sure you're only seven? [laughter] You sound like a much older girl than just seven. You did very, very well.

**Monlux:** Thanks.

**Potter:** Could you introduce us to your family?

**Monlux:** He is my dad, and my brother's over there.

**Potter:** What's your brother's name?

**Monlux:** Bailey.

**Potter:** Where did mom go?

**Monlux:** She's over there.

**Potter:** I want to tell you how proud I am that you would do those kind of things like going to the beach cleanups. That's so important. And Oregon really leads the nation in this kind of solv program. As you get to be older, make sure you stay involved and be a good citizen.

**Monlux:** Ok.

**March 26, 2008**

**Potter:** Thank you very much. Let's give this young lady a hand. You're going to go places, madeleine. [laughter] thank you for coming in, folks. City council will come to order. Karla, please call the roll.

[roll call]

**Potter:** Prior to offering public testimony to city council, a lobbyist must declare which entity he or she represents. Read the name again.

**Item 380.**

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

**Potter:** Could you please take a seat, sir?

**Mullen:** Yes.

**Potter:** You have three minutes, mr. Mullens.

**Mullen:** Thank you, sir. I'm here to try to help the children here with "oprah's big give" here to help the children and to shed some light on paying it forward. As you see, I wear a cross here. I am a child of god, and my first duty to my father is to explain why i'm a child of god is to tell you that the 2000 years is up tour mankind to do as they agreed to do to come here to serve god. At that point here, we'll move on to the agenda here as to paying it forward. As i've paid it forward over the last 14 years -- I got injured in a car accident where I was forced to go on social security and everything, and I went as far as to the supreme court to get them to look into this matter. As our president, president bush, said, we spend over \$260 billion as year for fradulent -- insurance fraud. As I indicated in my letters to the supreme court, this is not a fraudulent case, and I want them to look into it. This is where the school come in. When you went to jefferson high school, you exposed the youth have a right to or youth bill. Within the bill, it said that they have a right to create any kind of business or organization that can bring in income to help them support their schools or whatever. I would like them to get involved with it because it will show the united states where we can save money by fixing this problem we do have. It's an ongoing problem within the united states. Like president obama just said, it is time for us to cover our racial forgiveness and stuff and to move on in life, but we cannot forget how society or the system takes away our living. As we move on to pope benedict, he went so far as to say that it's the social sin, putting people in jail in the name of god. Drunk driving and mothers up there, madd mamas literally putting people in jail for nothing because they have a good topic. For the spanish people that's pushing for their driver's licenses and things, I don't believe they know what they're really pushing before because we have been genocided as a black race. I know I have been genocided by my driver's license. I hope they really know what they're asking for. This can be a good tool if used in the right way and a bad tool if used in the bad way. Oregon is the only state i've been there. Prior knowledge in the tv indicates that it's also a united states wide, too, that it's used racially and slandered towards all races when they need it to justify their reasons or get you out of sight in the political ring, which they did. Because my world was -- I could have went political. As for me being a christian, I don't have nothing to do with the government or whatever, but I must live here as my father when he came. He was a carpenter. I must live here. I wanted to raise my name was a spiritual saver, and I registered seven other businesses. But since I got injured with no income, i'm unable, and the state of Oregon wrote me back saying that they cannot register the business because I don't have a place to register the business or even a place to stay due to the fact --

**Potter:** Mr. Mullen, your time is up.

**Mullen:** I got 55 seconds.

**Potter:** No. You're 55 seconds over. You're going in the other direction.

**Mullen:** I would like to order a copy of your recording also.

**Potter:** Please give your report to the council clerk there. Thank you, sir. That was the only communication. Correct?

**Moore-Love:** Correct.



**March 26, 2008**

**Potter:** Do any commissioners wish to pull any items from the consent agenda? Any member of this audience wish to pull any item from the consent agenda? Please call the roll.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. There are no time certain. We'll be moving to the regular agenda.

**Item 395.**

**Stephen Keller, Office of Management and Finance:** Good morning, mayor Potter, commissioners. My name's steven keller. I'm with the office of finance and management. I'm a project manager for this project. The contract before you is for consideration of a professional services of mcbride architects for \$167,000. This contract is to restore the -- provide design services to restore the envelope of the Portland building. The selection committee for the mcbride was conducted by a diverse group of building experts, and the Portland building is nearing its 30th anniversary, and it's beginning to reveal some water damage to the exterior systems of the building, so this contract will seek to remedy those issues for all of them. The contract will achieve a few simple goals, provide a comprehensive envelope assessment of the building, develop a prioritized work plan to be implemented over five years and to include design services for the initial phase of work. So those would be high priority issues. And then lastly it will generate a long-term routine maintenance plan for the building.

**Potter:** Any questions? Thank you. Anyone signed up to testify on this matter?

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

**Potter:** Anyone here who wishes to testify to this specific issue? It's a nonemergency and moves to a second reading.

**Keller:** Mayor, if I may say one thing, I know I'd just like to wish erik Sten the best of luck in his future endeavors. Having worked in affordable housing for several years before I came to the city - - you know -- I have seen the direct benefit to families and individuals of your long-term efforts, and I know your work is really appreciated among the community. So thank you.

**Potter:** Very nice of you to say. Please read item 396.

**Item 396.**

**Jeff Baer, Director, Bureau of Purchasing:** Good morning. I'm jeff baer with the bureau of purchasing, and before you is a request to give us authorization to proceed with awarding a contract to new horizon communications for the council crest park tower replacement project. Back in october, we were before you with aren't ordinance that gave us permission to do an alternative construction contract, which we were pursuing the design build process. We did a formal solicitation to request a proposal process. We received three proposals. We had a diverse evaluation committee convened, and new horizons communications was selected through that process. We have identified a little over \$1.3 million in subcontracting opportunities which 23.5% of that is expected to be awarded to minority women or emerging small businesses. I think we're well on track for meeting that. They are currently in full compliance with our equal benefit programs. We have representatives here if there are any questions.

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

**Saltzman:** This will take one year?

**Mark Gray, Bureau of Technology Services:** Roughly one year. The finish of the work is slated for june of next year. However, the majority of that is just clean up toward the end of it. The bulk of it will be finished before the winter.

**Saltzman:** Aye. Salt is it being built next to the existing tower?

**Gray:** My name is mark gray. I'm the manager of infrastructure and engineering for bureau of technology services. And, yes, the tower is going to be constructed on-site next to the existing tower, and we'll move the radiating equipment over to the new tower.

**Saltzman:** Thank you.

**Potter:** Other questions? Thank you. This is a report. I need a motion to accept.

**March 26, 2008**

**Leonard:** So moved.

**Saltzman:** Seconded.

**Potter:** Please call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. Please read item 397.  
**Item 397.**

**Adams:** With council's permission, i'd like to hold this over a week so we can complete some additional analytical work with the office of management and finance.

**Potter:** Hearing no objection. Please read item 398.

**Item 398.**

**Potter:** Second reading. Call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. Please read item 399.  
**Item 399.**

**Potter:** Second reading. Call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Potter:** Aye. Please read item 400.

**Item 400.**

**Saltzman:** This is a bookkeeping item to update the city's lease with verizon on Portland parks property at the top of the vista ridge tunnel. Among other bookkeeping items, the amount verizon pays us will be going up from about \$1600 a month to almost \$3000 a month.

**Potter:** Is that it?

**Saltzman:** That's it.

**Potter:** Anybody signed up to testify on this matter? Is there anyone here who wishes to testify to this matter? It's an emergency. Call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. Please read item 401.

**Item 401.**

**Sten:** This is a little bit bigger housekeeping matter. The housing investment fund is a most flexible tool because it's a general fund for housing. When the housing investment fund gets paid back, which does happen, the money doesn't go through the normal budget process, and this will actually -- the recommendation is to have more flexibility with the money. Starting in next year's budget process, it would run through the normal process like new housing would run or other housing funds. There's a second piece of this, which is oomph actually manages the housing fund itself. They basically manage it, give it back to b.e.d. who spends it. Both of those arrangements, I think, were not well thought out when it started way back when. The actually arrangement with p.d.c. goes back to the housing council that mayor katz started. The reason it was run that way was not because it was just completely arbitrary, but with that long gone, this would normalize the budgeting.

**Potter:** Questions? Anyone signed up to testify on this matter?

**Moore-Love:** No one signed up.

**Potter:** Anyone here who wishes to testify to this matter? Please call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. The next item I need a motion to suspend the rules and here a four-fifths item. Go ahead.

**Saltzman:** I'd make the motion.

**Potter:** Ok. Do I hear a second?

**Adams:** Seconded.

**Potter:** Call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. Please read item 401-1.

**Item 401-1.**

**Sten:** I brought this forward. It appears the commission omitted nine properties that were supposed to be on the list. This will fix that.

**March 26, 2008**

**Keith Witcosky:** That was essentially it. Last week you approved 546 applications to this program. There was nine, some oversight, that were not on the list. This includes those nine in the materials we'll be submitting to Multnomah county which is due on april 1st.

**Potter:** Any questions from the commissioners? Anyone signed up to testify on this matter?

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

**Potter:** Anyone here who wishes to testify to this matter? It's a resolution. Call the vote.

**Adams:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Potter:** Aye. Recessed until 2:00 p.m.

At 9:57 a.m., Council recessed.

**March 26, 2008**

**Closed Caption File of Portland City Council Meeting**

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

Key: \*\*\*\*\* means unidentified speaker.

**MARCH 26, 2008 2:00 PM**

[roll taken]

**Potter:** Please read the 2:00 p.m. time certain.

**Item 402.**

**Potter:** The city attorney will describe the hearings process.

**Linly Rees, Deputy City Attorney:** This is an on the record hearing. You must limit your testimony to material and issues in the record. During the hearing you may only talk about the issues, testimony, exhibits, and other evidence that were presented at the earlier hearing before the hearings officer. You may not bring up anything new. This hearing is designed only to decide if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. We'll begin with a staff report by the bureau of development services staff for approximately 10 minutes. Following the staff report, city council will hear from interested persons in the following order. The appellant will go first and have 10 minutes to present their case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to council. The three-minute time limit applies regardless of whether you're speaking for yourself or on behalf of an organization. The principal opponent in this case the applicant, will then have 15 minutes to address council and rebut the appellant's presentation. After the principal opponent, council will hear from persons who oppose the appeal. If there is no principal opponent, the council will move directly to testimony from persons who oppose the appeal after supporters of the appeal conclude their testimony. Again, each person will have three minutes each. Finally, the appellant will have five minutes to rebut the presentation of opponents of the appeal. Council may close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, council will set a future date for the adoption of finding and a final vote on the appeal. If council takes a final vote today, that will conclude the matter before council. Again, it's an on the record hearing, which means you must limit your remarks to argument and evidence in the record compiled by the hearings officer. You may refer to evidence previously submitted to the hearings officer, you may not submit new evidence. If your argument includes new evidence or issues, council will not consider it and it will be rejected in council's final decision. If you believe a person who addressed council improperly presented evidence or -- not in the record, you may object to that argument here today. Finally, under state law, only issues raised before the hearings officer may be raised in this appeal to council. If you believe another person has raised issues today not raised there, you may object to council's consideration of those issues.

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

**Leonard:** I do. Members of the east columbia neighborhood association came into my office to discuss with me this matter. I made it clear to them that I couldn't take a position and would listen only, and not draw any conclusions based on their presentation until after this hearing.

**March 26, 2008**

**Potter:** Do any members of council have questions that need to be addressed before we begin the hearing? We'll begin with a 10-minute presentation from b.d.s. staff.

**Stephanie Beckman, Bureau of Development Services:** Thank you. My name is stephanie beckman, i'm senior planner with the bureau of development services. I'm going to go over the proposal today, the hearings officer decision, and cover the appeal points real briefly. The purpose of today's hearing is to consider an appeal of the hearings officer's decision to approve a zoning map amendment. The appellant is the east columbia neighborhood association, represented by mary helen kincaid. The applicant is howard brandwein and jeri geblin, represented by christopherkoback their attorney, and the decision before council is to uphold with modifications or overturn the hearings officer's decision. Summary of the proposal. Again, it's a zoning map amendment to change the zoning of a little over a 22-acre site from r.f., which is residential form forest, to r-10, in come performance with the cents plan designation for the site. The proposal is evaluated against the arrival criteria for base zone changes, which is a very narrow set of approval criteria focused on the availability of public services. The applicant in this situation did not provide a specific development proposal, so we're just looking at services to the site from the surrounding area. There's no actual development proposal at this time. This shows the existing zoning. It's r.f. With a comprehensive plan designation in parentheses, of r-10. The r.f. Doane allows one dwelling unit per two acres of site area, which would amount to approximately nine lots on this property. One other thing that I would point out on the property is that there is a small area at the very southern portion of the property that has environmental conservation, the small c zoning, and that's running along a drainage canal that runs along the southern border of the property. This map is also helpful just to get a lay of the land here. Site fronts on northeast 13th marine drive is to the north, and then to the south of the property is northeast gerts road. You'll also note that there is r10 zoning surrounding the property. There's also commercial to the north, and a little bit of industrial and employment zoning in the immediate vicinity of the property. This shows the proposed zoning of r10. Which would allow one dwelling unit per 10,000 square feet of site area, which is approximately 82 lots for single family homes. Those numbers that i've given are based on the assumption that there would be some sort of street network put in place when the site developed to serve the new homes, which reduces the allowed density slightly. This is an aerial photograph showing the property. There is a little bit of development on the property at the eastern end. There's a single family home and a few accessory structures, including a large barn-type structure. This shows the general location of the hundred-year floodplain and wetlands on the property, and open channels. The blue is floodplain, the green is wetland, and then like I said before, there is a drainage channel along the southern portion of the property that's operated by the peninsula drainage district.

**Leonard:** Can they build in the proposal on the floodplain and/or wetlands?

**Beckman:** I think that's probably a big reason why we're here. The floodplain and wetlands do not have any environmental zoning over them. They don't have protection under the city zoning code.

**Leonard:** Why is that?

**Beckman:** Because the environmental zone is the mechanism that the city has to protect environmental resources. And so for some reason when these were inventoried or when this -- the environmental zone were put in place in this area, they weren't put over these water features. So at this point -- well, they can't build in them as they -- as the property sits now, but there aren't protections in place to keep the property from being changed, for example, filling of wetland areas. There are -- the applicant is pursuing grading permits and -- with the city and wetland fill permits with army corps of engineers and division of state lands who do have jurisdiction over these resources right now.

**March 26, 2008**

**Leonard:** The obvious question is, how is it that we have overlays on other wetlands and floodplains and not this one? Were you saying it was an omission?

**Beckman:** I really can't answer that question. What I can tell you is that they were identified in a 1990 study of the area, the east columbia natural resources management plan. And they were given a very low rating in terms of the resource value. And it appeared there was some assumption there would be some fill to make land developable. So i'm not -- I guess I haven't done all the research to go back and find out why in the '90s there wasn't environmental zoning placed on this property. Does that answer your question?

**Leonard:** No. I hear what you're saying.

**Beckman:** This is a conceptual development plan, and I want to be real clear this was not submitted as part of the zoning map amendment application packet. The applicant is pursuing permits to grade the property and basically to fulfill -- facilitate this type of development plan where they would have development clustered on the eastern portion of the property and I think some mitigated wetland area on the western portion. A few photos of the site and the area. This is along the frontage of northeast 13th. Again, looking across to a site across the street from 13th. This is right at the entrance to the property. This is the driveway leading up to the house. This is again at the entrance to the property. There is an opened pond up at the eastern portion here. The close-up view of that same shot.

**Leonard:** That pond is an example of something that would be filled in?

**Beckman:** If the permits are granted from division of state lands, I believe that is part of their proposal. This is the existing large single family home on the property. This is looking across the ponds at the large barn structure. And then this is further out into the western portion of the site, which is largely kind of -- appears to be a large open field with trees and vegetation around the outer area. And another shot of the interior of the site. Another pond area towards the northern portion of the property. And this is the drainage canal that is along the southern portion of the property. As I mentioned earlier, administered by the peninsula drainage district. The hearings officer held a hearing on the indication and found that all city service bureaus, including the peninsula drainage district, reviewed the proposal and found that services are adequate to support the requested zone change. I can go through those individually if you like, but essentially the only two service providers that asked for more information were police and transportation raised concerns about one interception in the vicinity of the area, and additional information was provided, and based on that information, all of the service bureaus found they could serve the increased in density to the -- on the property. The hearings officer also found that concerns raised about potential future development of the site were not relevant to this review because of the narrow focus on adequate -- adequacy of services under the zoning map amendment criteria. And the hearings officer approved the requested zone change. In terms of appeal issues, the neighborhood association has questions -- questioned the finding of adequate public services, specifically they have asked for -- have noted the lack after sentence -- services into the site, not just providing them at the frontage of the property, but actually extending into the site through some of the environmental areas, environmentally sensitive areas that you saw. And they've questioned whether there would be cumulative impact of development in the area based on the amount of development potential in the area in general. They also raised environmental impacts as a concern about the impact of any future development of the property, including flooding and impacts on wetlands and wildlife. To briefly respond to these approval criteria for zoning map amendment specifically states that no plan is required, or that if no plan is provided, that the service providers would base the finding of adequate services on the most intense use of the property. In this case it would be the maximum density under the proposed zoning or approximately 82 lots or a single family home. Complete review of services within the site would be conducted when a specific development proposal comes in for the land division or plan development. At that time the

**March 26, 2008**

applicant would be required to provide a specific utility plan, street plan meeting all standards and approval criteria, and there's no guarantee that they would get 82 lots or any number of specific number of lots to make that happen. Again, the approval criteria also find that adequate -- adequacy -- state that adequacy of services is applied only to the specific zone change site so you can't look at the overall area and development potential in the area, you need to focus on just this zone change site. And then the neighborhood also raised concerns that there were some proposals in the pipeline that might not have been accounted for by the service bureaus of those, a small number, 27 units, would really just represent assumed growth in the area, and would not have a significant impact on services. In terms of the environmental impacts, there really are no approval criteria for the represented -- can I have a couple more minutes to finish it off? There really are no approval criteria for the requested zoning map amendment related to environmental impacts. It specifically looks at adequacy of public services. And as I stated earlier, these issues will be evaluated as relevant to any proposal that comes in the in the nut for a specific development of the site. To quickly go over the alternatives, to deny the appeal and uphold the hearings officer decision. Deny the appeal and make modification to the hearings officer decision. Or uphold the appeal and overturn the hearings officer's decision. A couple of process issues. As the city attorney mentioned, the appeal is on the record. No new evidence should be considered. And the 120-daytime limit for this application is run out on april 18th. So we should have adequate time to process if we need to come back one more time. Thank you.

**Leonard:** I'm just trying to get my arms around this issue. I hear the issue of the approval criteria not necessarily taking into account a proposed development that those issues are addressed at the time the application is submitted for the proposed development. But I guess i'm just curious, I just assumed if we had a designated wetlands area or a designated flood zone, that notwithstanding that there were certain conditions property owners had to meet, including not altering that landscape and what i'm hearing you say is unless they have an overlay zone, even if we identify them as flood zones or wetlands, they are free to fill those in and develop on them as though they didn't exist?

**Beckman:** They are required to go to the appropriate jurisdiction for permitting of fill of the wetland without environmental zoning or the state and federal agencies. The grading permit that's in with the city for this property will not be issued before they can show us the permits they have the proper permits from the other agencies, but there's no mechanism for city staff to review whether or not it's appropriate for these water -- for the wetlands on the site to be filled and what -- how they would be mitigated for, etc.

**Leonard:** That gets back to, I guess, why that didn't happen, and if that doesn't happen, that means we forgo any opportunity to regulate.

**Beckman:** Right. One thing that might be helpful, there is a starch person who is familiar with the wetlands on the site and can probably talk to you a little wit about what their condition and value is, and maybe he might -- that might play in somewhat to why they weren't -- didn't get environmental zoning. The applicant is a long-time property owner. He may know some of that history as to why that happened. But -- they don't have environmental zoning now, so they don't have protection.

**Potter:** I had a question. I notice on the map most of the property surrounding this is r10.

**Beckman:** Yes.

**Potter:** Some of that property that has wetlands or is in the hundred-year floodplain that is already designated r10.

**Beckman:** Yes. And I want to -- you're looking at the one that's labeled g.i.s. map?

**Potter:** And the one that was on the screen. It actually had the pictures of the wetland, or the floodplain that was outside this specific area we're discussing, but adjacent to it and having an r10 designation.

**Beckman:** One thing I have to caution is that these aren't official delineations of wetlands or floodplain. They are, you know, our g.i.s. Layer that we use as a kind of guide. I have recently

**March 26, 2008**

seen a map that doesn't show the wetland area coming down that far south, but this is based on a national wetland inventory map that was digitized and placed in the city g.i.s. System. But, yes, there are other areas that are currently zoned for a higher density that may be in the floodplain in the area. Properties that are in the floodplain can be developed with a single -- if they have a current lot, they can be developed with a single home as long as they meet building code requirements for a finished floor elevation above the floodplain.

**Leonard:** They can take a permit out and build on the lot that's been subdivided in the floodplain --

**Beckman:** If it -- you couldn't, under current regulations, this was put in place in 2002, when the did I -- under current regulations you cannot divide in single family zones, you can't divide a property where you'll have building areas within the floodplain. So what is happening on this property is essentially I believe the applicant is trying to prepare the property for a future land division application by creating buildable area outside the floodplain.

**Leonard:** Did I hear you say since 2002 you can't divide property into lots within a flood point?

**Beckman:** In single-dwelling zones.

**Leonard:** Is that what this is?

**Beckman:** Yes.

**Leonard:** I'm a little confused. I thought you said we could create 89 lots versus the nine --

**Beckman:** This is just the zoning map amendment looking at whether or not services can be provided for that number of units on the property. If they come back with a land division application a this property -- on this property, with building areas in the floodplain, no, we could not approve it.

**Leonard:** I thought I heard you say they were applying for the u.s. Army corps of engineers for a fill permit to fill in the wetlands, thus -- does that remove that as an issue if it's filled in?

**Beckman:** It would. The idea --

**Leonard:** Can we let anybody who has a lot that's in a floodplain or wetlands fill in on the lot to raise it above the floodplain or wetlands, and then build?

**Beckman:** There are regulations about that, and probably I better refer you to -- I do have a staff person site development section who can answer those questions about the requirements. There are requirements for balance cut and fill, and they are considered still in the floodplain until they go to fema and actually get remapped and taken out, so we consider them in the floodplain until they go through that official process. Beyond that, the technical aspects of what's allowed in terms of filling floodplain, I don't have the technical expertise to answer that. Again, because there's no environmental zoning on the property or any other protections, you can take out a grading permit and change the property if you don't have any other overlays.

**Leonard:** Even if we identify any piece of property in the city as being in a floodplain, or as a wetland, unless we've in addition to that, designated it as an environmental zone, there's no protection of it per se? A landowner can go in and modify the landscape with fill if it's no longer in a floodplain?

**Beckman:** Well, they have to get proper permits, and there is the balanced cut and fill. So depending on the property, that wouldn't always be possible. But generally, yes, you can apply for a permit to change the property to create area outside of the floodplain. I don't know how often that happens.

**Leonard:** Maybe i've just not been paying attention, but this appears to be fairly unique. That's why i'm asking the questions.

**Beckman:** I haven't ever had -- seen a site where this has been proposed or occurred.

**Leonard:** It isn't just me?

**Beckman:** No.

**Saltzman:** The desired zoning designation is R10H. What does the H--



**March 26, 2008**

**Beckman:** That is related to the airport height restriction. I don't believe it would have any impact here for the zoning.

**Potter:** Other questions? Thank you. Now we'll hear from the appellant. You have 11 minutes. That's how long the staff presentation took.

**Maryhelen Kincaid:** Mary helen kincaid, the chairperson of the east columbia neighborhood association. Also the chairperson of the land use committee. I just want to point out a couple things on the map. This map is from Portlandmaps online. The dark blue is the floodplain and the striped areas, they don't show in real well, are wetlands. So I don't have a wear to compare the map, but it's a little different, and it shows mow wetland. This light blue horseshoe, looks like a head phone area, is a water body. According to that map, it's a permanently filled water body. The other feature I wanted to point out in here is, these wetlands here are on private property. They were part of the mitigated wetlands when these house were built here. I don't know how many of you know this, but our neighborhood has a strong history of a -- preserve wetland and open space. We're a small neighborhood, only about 600 residents. I'm assuming you know sort of the boundaries of where we are. And a lot of the neighbors are very concerned about the wildlife corridors that are being affected by development and the natural areas. A little history. Some of this is neighborhood institutional history, but in -- of course we all know about the 1948 vanport flood. Many houses established in this neighborhood were inundated with water. Some floated away before the levee, they were floated to the airport and brought back. Some of the same residents live there now. In 1971, this area was annexed to the city. Most of the area. Part of the bridgeton area was not along mayor votes aye, and I don't know the -- marine -- adopted by city council, and fast forward to 2002. Our neighborhood received a columbia slough award for stewardship of those three mitigated ponds in the -- the neighbors formed a group, and we've maintained those on a private basis in the columbia slough watershed recognized that accomplishment. Just last year two of our neighbors that were going to be here today but because of illness couldn't, they received an award for their leadership in spearheading enhancements to our one and only park in the neighborhood, and this included enhancements to drainageways, bridge crossings over areas, and waterway enhancements. And just this year east columbia on april 7th we'll receive an award for our work in preserving trees in our children's arboretum, which was once an overgrown black we'rery and filled win vasive species, and neighbors have cleared the area, have worked with the Portland parks bureau, metro, many private corporations to make that a better place. Our natural resources plan is guidance that we've used for protecting our natural wetlands and open space in the neighborhood. We hope the work with the bureau of planning to update that in the future because much has changed since the 1990s. Over 400 homes have been built since then, former farmland and horse farms have been developed into industrial use in single family dwellings. And many impervious surfaces have been created, and there's a large industrial complex south of gerz road that's been built up that's paved over what many residents know as the farm property. The stephanie alluded to our concern and we say this as often as we can, there are five cases and permits for proposals in this area, and it -- combined they make 150 family dwellings on 55 acres. Much the proposed areas are in the floodplain. This is all columbia edge water golf course. This piece of property here is at a preapplication stage, but their proposal is for 49 houses. This area along here is for 17 house and this is for four houses. And this piece of property, 16 houses. 82 houses, which is we have used for the projection, that's what the city is set to use. We've been explained that it became a new vocabulary term because a lot of us were new to land use, and still in infancy stages at this point. And we've -- we also know that it's not possible to separate or combine, or put two together, but we hope this serves as a stepping stone to the review of the comp plan that's going on and the Portland city plan, and that this might be a perfect opportunity for utilizing new energy that's able to look at a holistic approach at this area. If you just single out this one property, it's possible that you can see that it would have an impact on all -- on

**March 26, 2008**

the whole neighborhood if surfaces were filled. In a letter of January 16th, the attorney for Dr. Brandwein, the landowners, he stated that the neighborhood's rezoning argument, which is really our wanting to combine everything or make the zoning a little different that more fit the land that's there now, could have happened when the city amended its comprehensive plan in the 1990s. If we all had that wonderful foresight as opposed to hindsight, we could have done a lot of things better. We know we can go forward, but with the current process it's not possible to jump in the middle of when you get a land use review and jump into a comprehensive plan change and have it affect anything given the time line. We know that this area is changed, and we believe there needs to be some attempts in given that change to the land. Some of you saw the challenges that we have in wetlands area and drainage. I want to speak a little bit to the floodplain, that's been the biggest concern of our neighborhood. The three delineated wetlands, there's wetland a, the largest one year. This is six acres. According to a consultant's report, it's seasonably flooded, but the neighbors that live on either side say there's always water in there. Sometimes lower in the summer, but there's always water in there. Wetland b is a smaller area. It's an acre in size and seasonally fills with water, and does dry up. Cattails and other trees that have grown in there. Wetland c is this area that's the permanently flooded wetland that's been contained -- soils, and some other test what's they call wrapped in silk, and I've come to know that's some sort of historic soil that only builds up over years. If there's an expert, maybe he can explain that more. At some point tiles were placed in this pond. I think Stephanie pointed to the fact the land owner is going to -- has cut and fill requirement -- cut and fill permits to fill that permanently flooded pond. It's the one they want to build to build on top of as well as part of the floodplain that's in that area. In that same January 16th letter the attorney stated that they, meaning the neighborhood association, do not link the existence of any resources to the relevant criteria. We contend because of these wetlands that services that are brought to the site would not be able to be built because of the existence of the wetlands and the floodplain. It's sort of a catch-22 situation. We can say the services are there, but can they actually be brought to the site? We don't believe they can be because of the existence of the depth of the water, the depth of the flood -- the existence of the floodplain. And we don't believe it can be absolutely determined that storm water facilities streets, sanitary sewer, water services, that potentially could be located in what was a floodplain or is a floodplain, will -- would be able to be serviced provision to that site, and can they be located in the floodplain and can they be located and designed to eliminate flood damages to those services? And was that part of it ever considered by the bureaus that even though there are services to the street, are they capable of going on to the site and actually being services? I'm over?

**Potter:** Have you a minute.

**Kincaid:** Ok. I'm going to skip over the transportation issue, because there's like 50-page reports, and from the neighborhood standpoint it was difficult for us to deal with I want to respond to a statement that was made in a rebuttal to the hearing that said they didn't know where the neighborhood got their numbers. We did sort of an on the ground -- we went out, somebody sat in a lawn chair, around 6:00 a.m. To 8:00 a.m., counted the number of cars at the intersection, did a mathematical projection, said this many people live in the neighborhood, this many people left, if there were 82 houses, that was the figure we had to use, 50% of the people, so 41 people left and we figured 41 people would have to come back. That would maybe 82 trips each day. The consultant's report came up with a figure of 49. There's one intersection that's already an f intersection, and that's northeast sixth and marine drive. Shwe would be adding 82 more trips to that intersection. I just have a couple quick things to cover. The sanitary sewer system has indicate there'd is an existing public sewer to the -- with available capacity for land, but they said with a land division, so we have a little problem with that, because they've stepped into the land division, but we can't consider land division because that's part of the development. But they would be required to extend the -- to individual lots, and can this be done, so if that's the case, can it be done with the constraints

**March 26, 2008**

of the land being the wetlands and the floodplain? Currently there's septic tanks and no sewer line into the property. The storm water management --

**Potter:** You're going to have to wrap it up.

**Kincaid:** Let me just read our closing statement. We believe the unique qualities and constraints of the property will not allow service to be brought into the site without destroying natural resources. We would support any proposal made to build dwellings to fit the land. We do not support the structures for -- for the purpose of building single family dwellings. There are far too many alternatives available for building on sensitive areas. This should not be a case of looking at land without the unique qualities and following responses. Special care needs to be used to look at the feasibility of providing services to a piece of land with three delineated wetlands, natural stream, and drainage ways. And we're only speaking of solution that is a result of negotiation that would preserve wetland, open space, and vital storm water run-off resource while providing dwelling units that provide an opportunity to build housing in a unique setting or future neighbors.

**Potter:** Are there persons who have signed up who support the appeal?

**Moore-Love:** Two people signed up.

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

**Cathy Humble:** My name is kathy humble. I lived in the neighborhood in question for 30 years. I support the appeal by our neighborhood association because I believe it's not possible to provide adequate services for the proposed level of entity. The key factors are that the degree to which this area is wetland and the challenges -- it's easy enough for the hearings officer or council members to approve this density, but in this neighborhood the key services are provided by the peninsula management district. Their network of drainage ditches and pumps. I understand that they reviewed the proposal. I also understand that the preliminary storm water report does not have a detailed site utility plan or details of how the treatment of the storm water will be handled and the effect it will have on the bodies of water. The landowners report does not indicate what the structure will be for the runoff and indicates three grassy swales for the proposed building area of 82 single family dwellings. The bottom line is that the effect of your decision falls on the shoulders of the peninsula drainage district more than on direct city-run services. Mary helen talked about the -- about foresight versus hindsight. Let's not lay the ground work for a flood 10 years down the pike, let's have the foresight now to think through this decision thoroughly enough in advance.

**Potter:** Thank you. We'll now hear from the principal opponent, or the applicant. Please come forward. You have a total of 17 minutes.

**Christopher Koback:** Thank you. Good afternoon, urn, members of council -- your honor. I represent the applicant, dr.Howard brandwein, who is to my left. I just want to start by reminding the decision makers what the application is. This is an application to zone a piece of property to be consistent with a comprehensive plan. It was designated as residential 10 in the early '90s in a comprehensive plan, which was a normal process. And I have assumed great thought was placed upon the designation. We are not here to talk about what's going to be on the land in a year, two years, five years. The staff report and the decision in this case are clear. There are other processes that have to take place before anything can be placed on the property. Those will require permits, analysis, and somebody -- an applicant that meets a burden of proof before they determine what can be placed on the property. The question here is, has the criteria been met to zone the property formally on the zoning map so it matches the designation on the comprehensive plan? The code, the city code at section 33.855.050 contains that criteria. The first criteria is one I just mentioned. It asks whether or not the comprehensive map is consistent with the request. And it is. The comprehensive map shows the property as r.r. 10. The second one is a criteria we've actually spent most of the time with below and in this appeal, which we should be spending our time is. That is whether there's adequate services to support the new zone. And the important point of that criteria I

**March 26, 2008**

think is this sentence. It says, adequacy of services the is determined by the service bureaus who apply the demand numbers to the actual and proposed services to the site and surrounding area. There are professionals that are employed by the city who run bureaus and whose job it is to look at requests of this nature and make assessments. In this case they were given information that the maximum density would be 82 lots. That was used as the demand number, because there isn't a proposal for a specific development. So if you take the 22 acres and multiply the density, come up with about 87 lots, most people that considered this test subtracted about 15% for internal roads. Some -- the only people that didn't use 82 lots was our traffic engineer, who used 87. And so he was even more conservative than the city experts. In the record, you will have evidence that every service bureau that considered this found, based upon the projected demand of 82 lots, there were adequate services to support the zoning. So that -- the evidence in the record shows that that criteria was met. -- met. You did not hear today, and I don't think if you look at the record you'll find any substantial evidence that those professionals that work for the city were wrong. Substantial evidence I think is defined as evidence at a -- that a reasonable person can rely upon in making a decision. And the service bureau personnel provided that. And the opponents to this appeal have not. The other criteria, one is whether it applies if the zone is in an i.r. Zone or the property is on an i.r. Zone, and that does not apply. The last one is whether the site is within the city boundary, which it is. So based upon the applicable criteria, the evidence in the record, we would ask that you affirm the hearings officer's decision and approve this specific request. We encourage you not to make your decision based upon the existence of wetlands that have not been protected under the city conservation zoning, or on the existence of other natural features that may impact future development, but are not contained within the relevant criteria for the application that's before you. Mr. Brandwein is well aware of the constraints on the property as staff alluded to, there are applications with relevant jurisdictions, the army corps of engineers that will address existing natural features on the land. If those permits are granted in a way that allows less than 82 lots, that will be the constraints that face the developer when they come back for a subdivision application. If those permits are not granted, I think it's safe to assume the development will be significantly limited. But that is an issue that's not before us today, and we would encourage the council to make its decision based upon the relevant criteria. Unless there are any questions, I think that's our presentation.

**Leonard:** I have a question. On the hearings officer's decision, I don't know if you have it there --

**Koback:** I do.

**Leonard:** Page 3. Third paragraph, last sentence, in the analysis section he comments that the hearings officer is precluded from considering what might occur during the upcoming comprehensive plan review. So do I interpret that to mean that we have to look at this application today as the conditions exist, and we can't anticipate what may or may not happen in the future to modify or not the approval criteria?

**Koback:** To modify the approval criteria --

**Leonard:** He is speaking to the zone change, and he's speaking to the neighborhood's argument about what may happen during the upcoming comprehensive plan review. And what I inferred from that comment was that is -- he is precluded from anticipating what may or may not happen, what future conditions might be. You can't necessarily anticipate what the development might be. In other words, may or may not be, you have to look strictly at the criteria for a zone change. And whether or not services can be provided based on the existing conditions.

**Koback:** I didn't interpret that comment the same way. The hearings officer was in more of a vague way alluding to the goalpost rule, which is in Oregon statute, 2271.78, it says that even if there's a change in the law, for example, even if the comprehensive plan were changed tomorrow, to designate this property differently, since the application was filed before that change in the law, the statute I just referenced states this applicant is entitled to have his application decide order the

**March 26, 2008**

criteria in place -- deemed complete bite city. I think that's what the hearings officer was alluding to in that specific comment.

**Leonard:** I think i'm saying the same thing. So we can't anticipate what may or may not happen in the future. We have to look at the conditions today.

**Koback:** Under the Oregon state law, you're required to decide the application based upon the law that was in place when mr. Brandwein filed. I regardless of whether or not that law changes in the future, or even if you can expect it to change, you're bound to apply the law that was in place when he applied.

**Leonard:** To take that another step, we can't necessarily take into consideration what may or may not should be approved in terms of a development after the zoning change occurs as part of our decision-make ago this application.

**Koback:** I think that's the -- for a different reason. There will be another application, for example, that has the number of lots and it will have to show a detail of where the sewer is going to be, where the water is going to be, and if the wetlands stay where they're at, there's going to be limitation. If the permit is granted that allows one wetland to be filled and I think this is not outside the record, because you can take official notice of the state regulations, the d.s.l. Requires mitigation. One wetland may be filled to facilitate a certain element of development, it has to be mitigated somewhere else on the site.

**Leonard:** I can't take that into consideration in terms of whether I support or not support the application.

**Koback:** Any more than you can take into consideration they're there.

**Leonard:** Turn to page 8, understanding the discussion we just had, the hearings officer notes that the Portland department of transportation initially objected the application. I'm on the last paragraph on page 8. About halfway through the paragraph he says that one intersection at northeast sixth drive in northeast marine drive was found to operated at service f with or without the proposed zone change. Portland transportation raised concerns about this because it could not -- would not meet city standards. He then on the next page says no additional street dedication adjacent properties would be needed to install the turn lanes, therefore improvements to the intersection could be made in the future as a condition of approval associated with a development proposal. So what i'm reading there is him taking a different direction, saying if I were to look at this today as it existed, pdot doesn't think that this development can go forward, but in the future, whatever proposed development comes down through b.d.s. Needs to happen as a condition of approval some way to address this intersection. So because I believe that will be true, and i'm just reading this into his remarks, i'm going to go ahead and conclude that that criteria was met. So I find that troublesome. I mean, he's -- he appears to be saying two different things in his decision. I can't be put in a place where I have to pass judgment on what may or -- on the other hand, pdot said there's a failing intersection here, we don't think there should be any more development, but he's saying i'm going to go ahead and approve this zone change, even though pdot has said this is a failing intersection. Hopefully, I noticed in his conclusion, he didn't include this, but hopefully so the future application will have as a condition some remediation to this failing intersection.

**Koback:** If you read this paragraph and the evidence that supports it carefully, what he -- what the hearings officer decide and what pdot officially testified supported was the fact that this intersection is not going to be failing because of this proposal.

**Leonard:** It says -- .

**Koback:** It's going to fail no matter --

**Leonard:** It's failing now.

**Koback:** It is. Not because of any traffic generated by this rezone. There's one maneuver --

**Leonard:** His comments, he's indicating pdot raised concern with the zone change because it is a failing intersection.

**March 26, 2008**

**Koback:** Right. But if pdot did not say as part of this rezone it has to be fixed, because I think pdot recognized this development isn't cautioning that. It's a bigger issue for the city.

**Leonard:** It exacerbates an existing failing intersection, obviously if you have more development, if you have 82 more dwelling units added on to an intersection that is currently failing, how does that do nothing but make it fail more?

**Koback:** The evidence was that no cars from this development will take the maneuver that's causing that intersection to fail. There's one maneuver that caused that intersection to fail. It was a left from sixth on to marine.

**Leonard:** That's all it takes to have a fatal accident, one maneuver, one time.

**Koback:** The evidence was no cars from this development would make that maneuver.

**Leonard:** I don't see that here.

**Koback:** That's in the staff report. It's in the record.

**Leonard:** Point that out to me.

**Koback:** If you look at the submission from the January 9th --

**Leonard:** Where -- do we have that?

**Koback:** The city put numbers on them. It's a January 9th letter from traffic engineer Mike Art to Bob Haley.

**Leonard:** I don't know that I have that.

**Koback:** It's one of the exhibits that came in in the open record period. I don't know what number the city gave it.

**Potter:** Why don't you describe what it says while she's looking.

**Beckman:** It was the first report of December 11th. December 11th, 2007.

**Leonard:** We're looking for something that addresses the issue raised by pdot with respect to the intersection at northeast 6th drive, and Marine Drive. Which I'm familiar with. Right on the first page of the December 11th letter it says --

**Leonard:** I'm looking at a January 9th --

**Koback:** There was a preliminary report from the same traffic engineer. In the last paragraph --

**Leonard:** The first page.

**Koback:** First page, the traffic engineer found the proposed change would add no trips to the northbound --

**Leonard:** This is your -- your client's traffic engineer's statement. I'm looking for something from pdot where they concluded that they agreed -- I would expect your client's engineer to say that. I'm looking for our staff's response to that saying we agree that addresses the issue.

**Koback:** I can't tell you where they say I agree to this sentence, but this report and the subsequent one were given to Mr. Haley, who then said I have no problem with this application.

**Leonard:** The hearings officer.

**Koback:** No, Mr. Haley from pdot was at the -- he's the traffic engineer, he was in front of the hearing's office, he said I've read all the material and support the application.

**Leonard:** I'm just looking at the hearings officer's report. That's not apparent.

**Koback:** He's listed as one of the witnesses who testified. There is a tape of that.

**Potter:** Is it on page 9 on the second paragraph down?

**Leonard:** Again, yes. But the question that I've asked is, any necessary mitigation for traffic impacts can occur at the time of the development, and it looks like what the hearings officer is saying is, I acknowledge pdot has identified this as a failing intersection, and however, in the future I want to -- when a development is approved, I would hope that as a condition of agreement that this failing intersection is addressed. And that kind of gets to the heart of my concern. I'm asking how in one case can he say I can't anticipate what may or may not happen in future development applications, I have to look at this application based on its merits and the approval criteria, which is, can we provide services to the site, and in this instance he's saying, however, it appears if you look,

**March 26, 2008**

take a snapshot, look at the proposed development today, our traffic engineer folks say it's a failing intersection, therefore they can't agree to any zone changes. However, what appears could happen is that the time of a development application, we could -- the city could require as a condition of approval of that development that these mitigation efforts at that intersection, sixth and marine drive, be addressed so the application can be approved. And it feels like there's two different things happening there. He's saying on the one hand i'm going -- not going to anticipate what may or may not happen, and on the application on the other he's doing exactly that. So i'm having -- i'm troubled by the hearings officer's reasoning.

**Koback:** There's one material disteens. We know the situation at sixth and marine. It's an existing failing intersection.

**Leonard:** Right.

**Koback:** We don't know what the development is going to be.

**Leonard:** We know it's going to be houses. We know it's going to add people. So there's no designation less than that, so it's bad if it's just got to get worse.

**Sten:** Can I jump in here? At least with my history on these things, we can't -- the presumption is that -- which may not be the case, i'm not implying he's going to get approved for whatever proposal he makes, but the presumption is that failing intersections can be fixed through something. I've never seen a situation where we say now until the end of the world you can never develop this property.

**Leonard:** My point is, why isn't that a condition of this approval?

**Sten:** Because it's a zone change, not a development proposal. The -- what the hearings officer is actually doing is setting a bar, if I read it correctly, that the neighborhood, if I read this situation correctly, is going to be used. That he has to get over, which is that whether you want to put one house here or 87 houses, you're going to have to come in with a strategy to hip fix the intersection. And that's where you do it. You can't really say -- some cases this may be not the case, why don't we do that at this point. Development may in fact, i'm not saying in this case, be the only way to get something fixed. To build something that actually changes the -- the intersection, that's happened --

**Leonard:** If you're approving a zone change based on criteria that says you can only successfully change the zoning if services can be provided to the site, and if one of the bureaus that is responding to that says, well, currently we can't provide services to the site because the intersection fails, why is it inappropriate to say we can have the zone change as long as a condition of that changes, you addressed that concern before any development application of the failing intersection. I guess i'm not understanding.

**Sten:** The zoning code makes no provisions --

**Leonard:** We would just turn down the application. Pdot has said it's a failing intersection, any more cars is worse.

**Sten:** I think you have your point of view, I have my point of view. Ok.

**Koback:** If I could, when they were talking about when the hearings officer responded to that comment, that was the neighborhood saying we don't think you can put sewer and water through. My point is, until the development application is submitted and these other permits are processed, the land could change. There's a difference between the two situations. The traffic, we know what it is, the bureau did not see there were not traffic systems available for the site. Their conclusion was the opposite. They do not take the position that you should deny this. They supported the application.

**Leonard:** Page 10?

**Saltzman:** The office of transportation, mr. Haley, did ultimately say in the -- at the hearing that he has no problems with this plan.

**March 26, 2008**

**Koback:** And he submitted it in writing. Here's his recommendation. Transportation, engineering, development review continues to have no objection to the approval of the proposed zone change. That's a quote in the hearing. In the decision. On page 10.

**Leonard:** Page 10, where at?

**Koback:** That was the hearings officer quoting mr. Haley.

**Leonard:** I'm just asking you to point that out to me.

**Koback:** Starts on page 9 in quotes and goes over to page 10, and concludes with the recommendation I just read. That's from pdot.

**Leonard:** We must be looking at different --

**Koback:** Under recommendations.

**Saltzman:** Toward the bottom of page 10.

**Potter:** It's right here.

**Leonard:** I see that. I don't see the quote. Is that his words or is he quoting the transportation --

**Sten:** I think it's a factual matter the transportation signed off on this. The question that you appear to be posing, should there be some kind of requirement attached. You're not going to allow the zone change unless there's a guarantee. I don't think there's any dispute the transportation has signed off for the reason in the way that you're questioning whether it shouldn't.

**Leonard:** That's my point.

**Sten:** They have signed off to say all they're asked to say, which is, it is possible to develop your --

**Leonard:** If these things happen.

**Sten:** It's possible to come up with a plan to develop. That's all they're being asked to say. They're very rarely going to say it's not possible. What it will take to do that, we don't know, until they go through the development process.

**Adams:** That will come back to council.

**Sten:** That's all they said. It will come back to council if it's appealed. Which, unless people work together --

**Koback:** I don't think it will come back to council.

**Sten:** The development proposal?

**Koback:** I think everything else goes to luba. That's how I read your code.

**Sten:** I must have sat through a lot of hearings as a luba rep --

**Koback:** If it does, it does. I didn't read the code that way.

**Sten:** Yeah, it does. My experience is just about everything --

**Rees:** It depends on whether it's a type two or three land division. Until we know, fits type 3 it's here, fits type two, it's the hearings officer.

**Koback:** It may come back here. It will be reviewed.

**Sten:** We would encourage you to work with the neighborhood and keep it away from us.

**Potter:** Any further questions? Thank you.

**Leonard:** I'm sorry, i'm just reading this. If additional right of way is needed, it must be obtained by the applicant prior to approval of the zone change.

**Potter:** What page is that?

**Leonard:** This is in the letter handed to me november 16th. Response to bureau development services land use request by pdot. Mitigation --

**Adams:** Do we want to have a representative from pdot answer any questions?

**Leonard:** Are you looking at the same letter I am?

**Koback:** I'm looking at the decision.

**Leonard:** I'm looking at the november 16th pdot response to b.d.s.'s request for responses for this application, and it says additional right of way is needed for mitigation, the right of way must be obtained prior to the approval of the zone change.



**March 26, 2008**

**Koback:** Subsequently mr. Haley's letter and comments I think said at the hearing said he determined they did not need additional right of way.

**Leonard:** I'm looking at the documents you asked me to look at.

**Bob Haley, Bureau of Transportation:** Bob haley, i'm the staff person for your office of transportation. I'll hopefully try and straighten out some of the confusion. This application for a zone change goes through lots of different reviews, and sometimes many responses from the bureaus before bureau of development services staff feels they can take it forward with a recommendation in support. When this application was first submitted, it came with a traffic study which I reviewed. There were three study intersections, 13th, and we have the sixth and marine drive. And as you said, you're aware it's an awkward y intersection. With a zone change, without any development proposed, we take a look at 20 years out for traffic. If you had a specific proposal, we can take -- sometimes shorten that horizon down to a build out date of five or six years from when we'd expect it to be there. The approval criteria, talk about adequate public services, adequate transportation services from my perspective, have to be available or can be made available at the time of development and cover that whole 20-year horizon. The existing intersection at sixth and philoma and marine is not failing. It's not great, but it meets current city standards. So there's been some miscommunication --

**Leonard:** What does the hearings officer say --

**Haley:** I don't know why the hearings officer would have said it's failing now.

**Leonard:** One intersection at northeast sixth drive is found to operate at a level of service f.

**Haley:** The year -- right. When you look -- we're look at the year 2027, that's when this application came in, is 2007, so we're look 20 years out. When you look at that intersection in 2027, and just add the projected background growth that we use model from metro, which the city of office transportation uses very similar model and assumptions, then that intersection fails whether these get --

**Leonard:** In 2027. He's not speaking to --

**Haley:** He may have paraphrased it. If you look in the actual traffic study, it will say existing conditions at that intersection, and it's a service level of d, which is acceptable. Then you go from there to 2027 background and 2027 adding on the trips. It failed whether or not this project gets built or not in 2027. I have to look at that and say, well, our adequate transportation facility is going to be available in 2027. The answer is at this intersection, no. It's failing. So we have to then take a look at, is there mitigation possible at the time development comes in that would fix it and make it work? And the first time the traffic report came in they didn't really identify any mitigation measures for that intersection that would bring it back to acceptable levels. That's what I said in order for pdot to support this, you need to show some mitigation that will work. That we could condition the future development on. And the traffic consultant went out, took a look at -- in my letter that said that, that's what you quoted, if we need additional right of way, you're going to need it prior to pdot being able to support the zone change. Because I can't assume I can make a developer get a piece of right of way in the future. So they took a look at the existing right of way, and I believe sixth is a 50-foot center strip paving, and marine is such a width, and philoma is a width. By adding a left and right turn lane on sixth, as you head towards marine drive, within that existing right of way, just by changing the striping and taking a gravel shoulder and adding another eight feet of pavement, there is enough room to create a fix with just striping so that you're not holding everybody up who wants to go right on marine drive from sixth with everybody who is sitting waiting to go left. And that brings it back to a level of service e, which is our minimum standard in 2027 with just restriping and some pavement.

**Leonard:** You wanted that as a condition of this approval --

**Haley:** Only if we needed extra right of way, which then I couldn't impose on a future subdivision to go out and obtain it. That's why I was making it very clear, if we needed right of way, if you

**March 26, 2008**

couldn't identify a mitigation that would fit within a right of way and needed more, I couldn't be comfortable that services could be adequate for that intersection.

**Leonard:** How's that been addressed?

**Haley:** By making the traffic engineer look at the existing right of way with the geometry of those intersections and propose something that could be done and conditioned on the future development to fix that intersection to work at acceptable levels.

**Leonard:** Have you confidence, because i'm hearing you say a couple things, you're saying one point you're not comfortable that concerns you have will be taken into account in future developments --

**Haley:** Only that I wanted to make sure we weren't going to be in a position where we would require the future developer of this site under consideration today to go and purchase right of way needed to fix that intersection.

**Leonard:** But are you comfortable the condition, the traffic engineer hired by the applicant identified as mitigation measures would be included as conditions in a future development.

**Haley:** Yes.

**Leonard:** Thank you.

**Saltzman:** You concurred the fixes can be made without requiring additional right of way.

**Haley:** Right. It's just a messy intersection. If it was -- if we had the commercial property on the other side of the street on the north side, it would make it easier. And as just another aside, when I first looked at this application, I had them kind of address, think about in the future where future connectivity was going to go. When this project came in for precaution conference, they owned a parcel not only the big 22 acres, and i'm not sure if they still own it, there was a parcel on the north piece that connected to lakeshore drive. And to me that looked like a perfect place for a through street. We didn't want, as you saw, there's a lot of big dead end streets. And now when you look at what the site plan is showing for filling the east side to create land above the hundred-year floodplain, and mitigating on the west side, that future potential future street would go right through a brand-new wetland that gets constructed. So that may trump the connectivity requirement. What you saw was a conceptual plan with a loop road, not ideal for connectivity, but it's not the worst case in the world. So if we do not connect a future street to north lakeshore drive, there will be no cars from this project going to that intersection. They will -- there would be no reason. If they're going to go either north to marine at 13th or to gertz. There's nothing there. So if that development comes in without a through connection, then we will not make that required improvement of philoma and sixth with additional lanes, because they wouldn't be doing it.

**Potter:** Did you folks have anything else? Any other questions? Thank you very much. We'll now hear from persons who support the applicant and oppose the appeal.

**Moore-Love:** We have one person signed up. I guess he's not testifying.

**Potter:** Now we'll have rebuttal by the appellant. Please come forward. You have five minutes for your rebuttal.

**Kincaid:** A couple things about the transportation issue. We didn't get into that because it was really confusing, because at first the first report I have these, I was madly waving them back there, staff reports that the transportation bureau responded, actually bob haley, that stated on november 16th, 2007, based on lack of capacity at the intersection of northeast marine drive at sixth and northeast philoma road, transportation and engineering review cannot support approval of the zone change, and the net increase of trips added to the transportation system will be 726, 757. That was the initial response. Then they received more information and said that the results of the study show that northeast marine drive at 13th and northeast marine drive at gerts would continue to operate, and in 2027,, that's where that figure of northeast sixth and philoma road and marine would be a service level of f, that projection ends -- and that it's currently operating at d, we didn't have the capability to figure out if all these added trips would move it into an e or f situation. So

**March 26, 2008**

that was our difficulty with that. So we couldn't really respond to the change in the course of action there. And then to respond to Mr. Haley's response that if they didn't build inroad on northeast south shore road, actually one of the staff recommendations to the hearings officer was, if there were 82 houses proposed, which is what everybody had to use in this development since a proposal wasn't sent in, it's really hard for us to respond because at one moment we have to respond to 82, then we have to say there really isn't a proposal, but the staff said at -- there would be 82 projected single family dwellings, the department of transportation said there has to be a road, and it would be on that access piece of property that would return through wetlands that would fill in a wetlands. So it's kind of a moving target for us, because they say if they don't build the road there wouldn't be any cars, and there wouldn't be any traffic. We have to look at what they said with the 82 projected proposed dwelling units. And that was -- has been our difficulty all along, at one point some people looked at it with 82, and then they say you can't look at development because there's not a development proposal. So depending on which argument it is, we can respond to both sides, but I don't know which ones -- at what point we need to respond to. My other question is, if this land was overlooked with an environmental overlay, is there any other cases in the city, is there any way to research that to see what can be done to protect wetlands because this is a unique area and I don't -- you probably know the city better than I do, but it's very unique that there's this amount of wetland and this amount of floodplains, and we believe that should be protected. Our resources in this time frame we've been dealing with this, have not been able to determine if there's any other cases where a wetlands area or floodplain area has been protected, has been revisited for this comp plan. And we don't have the resources to do, that but we would hope we could protect it as opposed to say, oops, you came too late and we're going to do the comp plan review later, and this land then affects the people in that neighborhood. We had to review -- we had to rely on the expertise of the city bureau staff and they've been very helpful, and supportive of any requests we've had. But it's also from a difficult standpoint, because it's sort of institutional and history, and conventional wisdom. And they're very complicated matters, as we've seen today with not only transportation, but wetland and the cut and fill requirements. And to answer one of those questions, if a wetland is filled in the way we've been led to understand is that than equal amount has to be cut from the land if they cut 10 cubic yards f. They fill 10 yards they have to cut 10 cubic yards. And there's an immen's amount of floodplain and wetlands, and not as much proportionate land to cut. So that might be an issue as well. Those are my only points I wanted to point out, unless there are any other questions.

**Potter:** Thank you. It's now time for council discussion. We have to have a motion for one of the following ways. Council denice the appeal, the council denights appeal but asks that new information be considered or ask for amendment language. Or three, councilman grants the appeal and returns the hearings officer's decision.

**Sten:** I would move to deny the appeal and uphold the hearings officer's decision and I will just briefly say I think that they do meet the criteria for it's an underlying change in conformance with the comp plan. I think they meet the requirement the, there are a whole lot of issues and I don't think the neighborhood has wasted your time becoming this smart on the issue, because I think that these issues will have to be addressed before anything is built. But I don't see an argument and I grant this change.

**Saltzman:** Second.

**Potter:** And -- yes? Please call the vote.

**Adams:** I want to thank both sides for making very persuasive arguments. I agree with the analysis that the rules don't allow for us to do anything other than the motion that's on the floor. Aye.

**Leonard:** I appreciate the discussion, and I appreciate bob, your explanation. That was very helpful. And responsive to the specific concerns I had. So I am concerned about -- I am very familiar with that area. I worked out in that area for a number of years. Is it a very hazardous area

**March 26, 2008**

in terms of traffic, and the staff has done a magnificent job in packaging this and working with the neighborhood, and explaining why they believe the criteria has been met. I respectfully disagree. I think that the improvements that should happen out there should happen now in anticipation of future development, and future impacts, and not count so much on alternative routes or what may or may not be constructed in terms of infrastructure before the site is developed. One other thing, this isn't so much a specific criticism, but it's a pet peeve of mine, and so again, this isn't directed at any one entity. I wish we could develop a policy where when we rely, where we have to rely on outside information, and I've suggested to pdc and others that we set up a system where in this instance for an example we would have a list of approved traffic engineers that worked in the private sector, and when a development was being proposed, and they needed to do a traffic engineering study, we -- the city, and in this instance pdot, would contract with this private sector engineer that would do the study and the developer would reimburse us for the cost. I'm concerned about that dynamic that's caused when the developer actually hires the consultant themselves. And our staff does review and they do a good job and I understand that. I just think the dynamic is one that is concerning so I hope pdot considers that kind of a model in the future. No.

**Saltzman:** Well I do believe that under the narrow criterion that we are faced with in the situation that this does this zone change conforms with the comprehensive plan first and foremost. That carries a lot of weight. And secondly, further criteria receives the approval from all relevant city agencies. Therefore, I will support this zone change. I think the neighborhood has raised a lot of issues and I think those issues will definitely have to be addressed before the particular property here is developed. And those are some thorny issues. So I vote aye.

**Sten:** I gave my reasoning. I trust the staff will review the development proposal when it comes forward and make sure these issues are addressed. Aye.

**Potter:** I am going to vote aye as well but I strongly suggest to the applicant that they do work with the neighborhood at next phase of development because to me, we are going to be losing some wetland and I think that even though our decision is not based today on that particular criteria, it is that I think it's important to the neighborhood. As I listen to the discussion from the neighborhood, it occurred to me that perhaps we need some kind of support within the city for neighborhoods who don't have the same kind of expertise or cannot afford to hire an attorney. And that perhaps we need to use the ombudsman's office or some office that can provide assistant so at least you have more of a level playing field than you do now. But within the strict guidelines that we have, I think that applicant met those guidelines and it now moves to the next phase. I vote aye. [gavel pounded] we are adjourned until next week.

At 3:34 p.m., Council adjourned.