



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **20TH DAY OF AUGUST, 2008** AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Adams, Fish and Leonard, 4.

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

Agenda Item No. 1173 was pulled for discussion and on a Y-4 roll call, the balance of the Consent Agenda was adopted.

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<p><b>1138</b> Request of Pete Colt to address Council regarding crime in Northwest, Portland Department of Transportation, Portland Parks and Recreation and the Police (Communication)</p>	<b>PLACED ON FILE</b>
<p><b>1139</b> Request of Lee Iacuzzi to address Council regarding transpanic (Communication)</p>	<b>PLACED ON FILE</b>
<p><b>1140</b> Request of Walter Valenta to address Council regarding Bridgeton Trees Settlement (Communication)</p>	<b>PLACED ON FILE</b>
<b>CONSENT AGENDA – NO DISCUSSION</b>	
<p><b>1141</b> Reappoint Linda Barnes, Craig Spansail and Mike Tate to the Fire Code Board of Appeals, and appoint Mark Chubb as alternate, for term to expire June 30, 2011 (Report introduced by Mayor Potter and Commissioner Fish)  (Y-4)</p>	<b>CONFIRMED</b>
<b>Mayor Tom Potter</b>	
<p><b>1142</b> Appoint Carrie Schilling and John Cisneros to the Development Review Advisory Committee for terms to expire December 31, 2012 and February 28, 2012 (Report)  (Y-4)</p>	<b>CONFIRMED</b>
<b>City Attorney</b>	

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<b>1143</b> Amend contract with Cable Huston Benedict Haagensen & Lloyd LLP for outside legal counsel (Ordinance; amend Contract No. 38037)	<b>PASSED TO SECOND READING AUGUST 27, 2008 AT 9:30 AM</b>
<b>Office of Management and Finance – Business Operations</b>	
<b>*1144</b> Pay claim of Vernon Erovick (Ordinance) (Y-4)	<b>182110</b>
<b>*1145</b> Pay claim of Ethel Root (Ordinance) (Y-4)	<b>182111</b>
<b>*1146</b> Pay claim of Irene Root (Ordinance) (Y-4)	<b>182112</b>
<b>*1147</b> Pay claim of Raymond Root (Ordinance) (Y-4)	<b>182113</b>
<b>Office of Management and Finance – Financial Services</b>	
<b>1148</b> Statement of cash and investments July 01, 2008 through July 23, 2008 (Report; Treasurer)	<b>PLACED ON FILE</b>
<b>Office of Management and Finance – Purchases</b>	
<b>*1149</b> Amend contract with CGI Technologies and Solutions, Inc. for continued support and maintenance to the budget development and financial planning system (Ordinance; amend Contract No. 34832) (Y-4)	<b>182114</b>
<b>Police Bureau</b>	
<b>*1150</b> Apply for a \$900 Wal-Mart Stores, Inc. Community grant for Crisis Response Team Volunteer training (Ordinance) (Y-4)	<b>182115</b>
<b>*1151</b> Authorize the Police Bureau to appoint Mark Gaither to the classification of Police Officer at the 5-year salary rate (Ordinance) (Y-4)	<b>182116</b>
<b>*1152</b> Authorize the Police Bureau to appoint Matthew Jamison to the classification of Police Officer at the 5-year salary rate (Ordinance) (Y-4)	<b>182117</b>
<b>*1153</b> Authorize the Police Bureau to appoint Joshua Kraner to the classification of Police Officer at the 4-year salary rate (Ordinance) (Y-4)	<b>182118</b>
<b>Commissioner Sam Adams</b>	
<b>Bureau of Environmental Services</b>	
<b>*1154</b> Accept a grant from FishAmerica Foundation in the amount of \$43,200 for Stephens Creek Confluence Habitat Enhancement Project (Ordinance) (Y-4)	<b>182119</b>

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<p><b>*1155</b> Accept a grant from the U.S. Environmental Protection Agency in the amount of \$180,000 for the Brownfield's Petroleum Cleanup at Rollin' Tire site (Ordinance) (Y-4)</p>	<p align="center"><b>182120</b></p>
<p><b>*1156</b> Authorize grant agreement with Overlook Neighborhood Association to fund the Willamette Bluff Light Post Project from the West Side Community Benefit Opportunity Program (Ordinance) (Y-4)</p>	<p align="center"><b>182121</b></p>
<p><b>*1157</b> Authorize the Bureau of Environmental Services to execute a permit with the Port of Portland for construction of the Swan Island Combined Sewer Overflow Pump Station Landscaping Project No. 8547 (Ordinance) (Y-4)</p>	<p align="center"><b>182122</b></p>
<p><b>*1158</b> Authorize the Bureau of Environmental Services to acquire certain permanent and temporary easements necessary for construction of the Portsmouth Force Main Project No. 6902 through the exercise of the City's Eminent Domain Authority (Ordinance) (Y-4)</p>	<p align="center"><b>182123</b></p>
<p><b>1159</b> Amend contract with Columbia Slough Watershed Council to extend term, expand scope of work and increase compensation for watershed health (Ordinance; amend Contract No. 36796)</p>	<p align="center"><b>PASSED TO SECOND READING AUGUST 27, 2008 AT 9:30 AM</b></p>
<p><b>Office of Transportation</b></p>	
<p><b>1160</b> Set a hearing date, 9:30 a.m. Wednesday, September 24, 2008, to vacate a one-foot unnamed street between SE 75th and 76th Avenues north of SE Division St (Report; VAC-10057) (Y-4)</p>	<p align="center"><b>ACCEPTED</b></p>
<p><b>*1161</b> Amend Intergovernmental Agreement with Multnomah County to continue planning services for the rehabilitation or replacement of the Sellwood Bridge (Ordinance; amend Contract No. 52709) (Y-4)</p>	<p align="center"><b>182124</b></p>
<p><b>*1162</b> Amend Intergovernmental Agreement and Jurisdictional Transfer Agreement with Oregon Department of Transportation to design and construct the Martin Luther King, Jr. Viaduct Replacement Project (Ordinance; amend Contract No. 52107) (Y-4)</p>	<p align="center"><b>182125</b></p>
<p><b>*1163</b> Accept a grant award from the Oregon State Marine Board in the amount of \$1,600 to help fund maintenance of the Eastbank Boat Dock (Ordinance) (Y-4)</p>	<p align="center"><b>182126</b></p>
<p><b>*1164</b> Authorize the Office of Transportation to acquire certain property and to provide payment of relocation costs necessary for construction of the NE 47th Avenue Intersection Improvement Project through the exercise of the City's Eminent Domain Authority (Ordinance) (Y-4)</p>	<p align="center"><b>182127</b></p>

**August 20, 2008**

<p><b>*1165</b> Grant revocable permit to Kingston Bar and Grill/PSU to close SW 20th Pl between SW Yamhill St and SW Morrison St and SW Morrison St between SW 20th Ave and SW 20th Pl on August 30, 2008, October 4, 2008, October 25, 2008, November 8, 2008 and November 22, 2008 (Ordinance)  (Y-4)</p>	<p align="center"><b>182128</b></p>
<p><b>*1166</b> Grant revocable permit to Neighbors West Northwest to close NW 13th Ave between NW Hoyt St and NW Irving St on September 12, 2008 (Ordinance)  (Y-4)</p>	<p align="center"><b>182129</b></p>
<p><b>*1167</b> Grant revocable permit to Widmer Brothers Brewing Co. to close N Russell St between N Interstate Ave and N Mississippi Ave on September 6-7, 2008 (Ordinance)  (Y-4)</p>	<p align="center"><b>182130</b></p>
<p><b>1168</b> Grant revocable permit to Roman Catholic Archbishop of Portland/St. Stanislaus Parish to close N Failing St between N Interstate Ave and N Montana Ave on September 26-29, 2008 (Ordinance)</p>	<p align="center"><b>PASSED TO SECOND READING AUGUST 27, 2008 AT 9:30 AM</b></p>
<p><b>*1169</b> Extend Intergovernmental Agreement with Metro to June 30, 2009 for South Waterfront Transportation Management Association Exploratory Study (Ordinance; amend Contract No. 52812)  (Y-4)</p>	<p align="center"><b>182131</b></p>
<p><b>*1170</b> Authorize application to Metro Regional Travel Options for a grant to augment the SmartTrips Portland individualized marketing project (Ordinance)  (Y-4)</p>	<p align="center"><b>182132</b></p>
<p align="center"><b>Commissioner Nick Fish</b></p> <p align="center"><b>Bureau of Housing and Community Development</b></p> <p><b>*1171</b> Authorize subrecipient contract with the Central City Concern for \$300,000 for the Homeless Employment and Support Pilot Project and provide for payment (Ordinance)  (Y-4)</p>	
<p align="center"><b>Fire and Rescue</b></p> <p><b>*1172</b> Authorize Intergovernmental Agreement with Metropolitan Service District for maintenance of a computerized mapping system for Portland Fire and Rescue emergency response vehicles not to exceed \$25,000 (Ordinance)  (Y-4)</p>	
<p><b>*1173</b> Accept a donation from The Fireman's Fund with a value of \$25,000 (Ordinance)</p>	<p align="center"><b>REFERRED TO COMMISSIONER OF PUBLIC WORKS</b></p>
<p align="center"><b>Commissioner Randy Leonard</b></p>	

**August 20, 2008**

**Bureau of Development Services**

- \*1174** Extend the effective date of a Comprehensive Plan Map and Zoning Map Amendment previously approved by Ordinance Nos. 180713, 180749, 181175 and 181639 for property located at 5828 N. Van Houten Pl at the request of the University of Portland and Triangle Park LLC (Ordinance; LU 06-132925 CP ZC)

(Y-4)

**182135**

**Water Bureau**

- \*1175** Revise the Sandy River Conduit Relocation project cost to cover fees for design and construction (Ordinance)

(Y-4)

**182136**

**Commissioner Dan Saltzman**

**Parks and Recreation**

- 1176** Amend contract with SERA Architects for design and construction administration of an aquatics facility addition at East Portland Community Center (Ordinance; amend Contract No. 35980)

**PASSED TO  
SECOND READING  
SEPTEMBER 3, 2008  
AT 9:30 AM**

**REGULAR AGENDA**

- 1177** Revise the Business License Law code to use the term tax instead of fee, clarify certain sections and create a new chapter titled Temporary Businesses (Second Reading Agenda 1118; Ordinance introduced by Mayor Potter and Commissioner Adams; replace Code Chapter 7.02, add Code Chapter 7.03)

(Y-4)

**182137**

**Mayor Tom Potter**

**Office of Management and Finance – Human Resources**

- \*1178** Amend contract with the Immigrant and Refugee Community Organization to facilitate the City Summer Youth Employment Program (Ordinance; amend Contract No. 37275)

(Y-4)

**182138**

**Commissioner Sam Adams**

**Bureau of Environmental Services**

- 1179** Clarify new policies being implemented as part of the adoption of the 2008 Revision of the City Stormwater Management Manual (Ordinance; amend Code Chapters 17.38 and 17.39)

**PASSED TO  
SECOND READING  
AUGUST 27, 2008  
AT 9:30 AM**

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<p style="text-align: center;"><b>Office of Transportation</b></p> <p><b>*1180</b> Authorize a Notice to Proceed to Portland Streetcar, Inc. to commence project management and design and civil engineering services for Final Engineering of the Portland Streetcar Loop Project (Ordinance) (Y-4)</p>	<p style="text-align: center;"><b>182139</b></p>
<p style="text-align: center;"><b>Commissioner Nick Fish</b></p> <p style="text-align: center;"><b>Bureau of Housing and Community Development</b></p> <p><b>*1181</b> Authorize subrecipient contract with Portland Development Commission for \$11,304,796 for rental housing development and provide for payment (Ordinance) (Y-4)</p>	<p style="text-align: center;"><b>182140</b></p>
<p style="text-align: center;"><b>Commissioner Dan Saltzman</b></p> <p style="text-align: center;"><b>Office of Sustainable Development</b></p> <p><b>*1182</b> Authorize an Intergovernmental Agreement with the Oregon Department of Transportation to administer federal transportation funds for a diesel fuel reduction market outreach center (Ordinance) (Y-4)</p>	<p style="text-align: center;"><b>182141</b></p>
<p><b>1183</b> Consent to transfer of Trashco Services, Inc. residential solid waste and recycling collection franchise to Waste Connections of Oregon, Inc. dba Arrow Sanitary Service (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING AUGUST 27, 2008 AT 9:30 AM</b></p>
<p><b>1184</b> Consent to transfer of Dunthorpe Sanitary Service Inc. residential solid waste and recycling collection franchise to Allied Waste of Lake Oswego (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING AUGUST 27, 2008 AT 9:30 AM</b></p>
<p style="text-align: center;"><b>City Auditor Gary Blackmer</b></p> <p><b>1185</b> Refer Charter Amendment adding an Office of the Ombudsman to voters at the November 4, 2008 General Election (Resolution)</p>	<p style="text-align: center;"><b>REFERRED TO THE OFFICE OF THE CITY AUDITOR</b></p>

At 10:41 a.m., Council recessed.

**August 20, 2008**

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**WEDNESDAY, 6:00 PM, AUGUST 20, 2008**

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

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**August 21, 2008**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **21ST DAY OF AUGUST, 2008** AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Adams, Presiding; Commissioners Fish and Leonard, 3.

Council recessed at 3:27 p.m.

Council reconvened at 3:36 p.m.

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

	<b>Disposition:</b>
<b>1186</b> <b>TIME CERTAIN: 2:00 PM</b> – Accept Staff Report and Recommendation and Order of Council for Debra Byers Measure 49 Claim (Report introduced by Mayor Potter; PR No. 06-181332) <b>Motion to adopt the staff recommendation to deny the Byers Measure 49 claim:</b> Moved by Commissioner Leonard and seconded by Commissioner Fish. (Y-3)	<b>STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED</b>
<b>1187</b> Accept Staff Report and Recommendation and Order of Council for Robert M. Boyl Measure 49 Claim (Report introduced by Mayor Potter; PR No. 06-180160) <b>Motion to approve claim under Measure 49 based on the Measure 37 claim file and the appraisal submitted by Mr. Boyle:</b> Moved by Commissioner Leonard and seconded by Commissioner Adams. (Y-3)	<b>STAFF REPORT ACCEPTED, RECOMMENDATION DENIED AND CLAIM APPROVED; PREPARE ORDER OF COUNCIL</b>
<b>1188</b> Accept Staff Report and Recommendation and Order of Council for Augustine L. Calcagno Family LLC Measure 49 Claim (Report introduced by Mayor Potter; PR No. 05-117098)	<b>CONTINUED TO SEPTEMBER 11, 2008 AT 2:00 PM TIME CERTAIN</b>
<b>1189</b> Accept Staff Report and Recommendation and Order of Council for Dean A. Grudzinski Measure 49 Claim (Report introduced by Mayor Potter; PR No. 05-126994) <b>Motion to accept staff recommendation and approve claim:</b> Moved by Commissioner Leonard and seconded by Commissioner Fish. (Y-3)	<b>STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED</b>
<b>1190</b> Accept Staff Report and Recommendation and Order of Council for Lahti and Sons, Inc. Measure 49 Claim (Report introduced by Mayor Potter; PR No. 06-180929) <b>Motion to accept staff recommendation and deny claim:</b> Moved by Commissioner Fish and seconded by Commissioner Leonard (Y-3)	<b>STAFF REPORT AND RECOMMENDATION ACCEPTED; ORDER OF COUNCIL ACCEPTED</b>
<b>1191</b> <b>TIME CERTAIN: 3:00 PM</b> – Appeal of Lamont Smith, TMT Development, applicant, against the Historic Landmarks Commission’s decision to impose certain conditions in approving the Cornelius Hotel rehabilitation at 809 SW Alder (Hearing; LU 08-108274 HDZM) <b>Motion to grant the appeal and uphold Landmarks Commission’s decision with modifications to conditions B and C. Staff prepare revised findings for September 17, 2008 at 10:00 am Time Certain:</b> Moved by Commissioner Leonard and seconded by Commissioner Fish. (Y-3)	<b>TENTATIVELY GRANT APPEAL AND UPHOLD LANDMARKS COMMISSION’S DECISION WITH MODIFICATIONS; PREPARE FINDINGS FOR SEPTEMBER 17, 2008 AT 10:00 AM TIME CERTAIN</b>

At 4:25 p.m., Council recessed.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

August 20, 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.

**AUGUST 20, 2008 9:30 AM**

**Item 1138.**

**Saltzman:** If you could state your name for the record and you have three minutes.

**Pete Colt:** Good morning, gentlemen. And one of the things that wasn't on that, I actually set out today to thank each of you individually for the time that you give to us here in the city. It's a very difficult thing that all of you do. Some nights you're working late. Not here with your families and I came to ask you to please thank your families for their generosity in giving you the permission to come out and could the things you do for us. I try to be involved in the city and whenever I go to one of these things after hours, there you are. And there is your staff, always giving, giving, giving and I think we should thank you for often and that's the primary reason I came today to thank your family and your boyfriends if you have one. And pdot, I want to say so many good things about pdot. Where would you begin. You really keep the city running. I want to thank you for the lights on burnside. It's much safer -- on burnside. I want to thank pdot, sharon white for doing the sting in our neighborhood because I live in a bedroom community. Northwest Portland and it's a densely populated -- most densely populated neighborhood in Oregon and there's always those conflicts between cars and pedestrians and it helps that she's going to be doing two more stings in our neighborhood. I want to thank the police department, our police department and our dispatch department have been outstanding. In dealing with the crime that goes on particularly in my part of the district, around trinity cathedral and saint maries and a want to thank saint mary's. For maintaining their property and getting rid of the graffiti as it appears which brings me to marsha dennis. Those stickers they put on the back of the parking signs are transient language telling them where to go, where to buy drugs and what do. By removing them off of the traffic signs, we're reducing our crime. I want to thank the housing authority and teresa sanchez. She's had a tough job, cleaning it up. And john who takes care of the tower on northwest everett and 19th. The police say he's been instrumental in reducing crime and also teresa sanchez has -- sorry guys out of time. Got to come back next month and thank you some more.

**Adams:** Appreciate it.

**Saltzman:** Read the next item, Karla.

**Item 1139.**

**Saltzman:** If you could give us your name for the record and you have three minutes and there's a clock in front of you there.

**Lee Iacuzzi:** Thank you. My name is lee iacuzzi, i'm a writer activist. Called not a good queer. I'm here to talk about my decisions with the state of Oregon with the bureau of labor and industry, the civil rights division, where I won two gender discrimination cases. And in the process of winning, I became a criminal. How does that happen in the city of Portland? I find it quite hysterical. And i'm lucky i'm not in jail. I wanted to talk about transpanic, because it's a defense mechanism used by the feminist women's community against transgender people. Unfortunately, people in the feminist women community, many are lesbians. Even though I won a substantial decision for the civil rights division, these two organizations, still have not included gender in their mission statement. This is a policy of the city of Portland, this is a policy of Multnomah county.

**August 20, 2008**

This is a -- now a state policy. So we don't want transgender people in our building because they scare us. Do they say the same thing about african americans being in the same bathroom, building? Isn't it the same language being used over and over and over? On 9/12 when I went public with what was happening, four women went down to the courthouse and filed stalking orders. On the fifth stalking order, they told the judge that I had a civil rights case -- first, the judge said they didn't have a stalking order. And they be they told the judge I was transgendered and that I wanted to be a man or something. And then the next question the judge asked was, "do I have any weapons?" i'm going to play a video for you. This video I paid -- taped and the next day the woman got a stalking order on me showing how she was afraid of me.

**Saltzman:** Is it 25 seconds?

**Iacuzzi:** It will be enough time.

[unidentified speaker on video]: I can't even answer this.

**Iacuzzi:** This woman got a stalking order on me. Said she was afraid. The next day she had a stalking order.

**Saltzman:** Sorry, your time is up.

**Iacuzzi:** It's time for you to take some action.

**Fish:** As the housing commissioner, let me respond to one thing. You mentioned reach, c.d.c., and we have a civil rights ordinance at the city and state ordinances and I will follow up on that and get back to you -- you mentioned mission statement, but it would be a non-discrimination policy that would be part of their hand book and policy so i'll report back to you on that.

**Iacuzzi:** Thanks.

**Saltzman:** Could you read the next communication, please.

**Item 1140.**

**Saltzman:** State your name for the record and you have three minutes.

**Walter Valenta:** Walter valenta. Bridgeton neighborhood. We have a settlement over the controversy pending -- on cutting down trees on the bridgeton levee. The next monday, the first trees are coming down and I think it'll be news worthy and there'll be press and I want you to know that this is something we worked out between the army corps of engineers, bridgeton neighborhood and I sent you out a picture, initially in this photograph, every one of those trees were going to be cut down in the original proposal from the army corps of engineers. We saved about just under half of those you see in this picture. Went from 131 trees being cut down to 69. But the -- probably the most important thing is -- and I want to thank commissioner Saltzman and his people, because these trees are going to be mitigated and rather than exempt from mitigation and that's probably the most important thing of the settlement actually allowed us to do creative things in the neighborhood to bring alive the streetscape -- streetscape things and that the they're not panicked that the crazy neighborhood is trying to destroy their businesses. The trees being cut down are going to be mitigated on people's properties and this is a complicated proposal. And I wanted to show you, the entire neighborhood was surveyed. Every tree was ranked and every tree that you could plant in the neighborhood was identified because there's such a narrow spot to plant trees on so we had to have cooperation. Maybe your neighbor is going to cut down a tree and you're going to plant a mitigation tree there. And I want to thank dave mcallister and council. But every one of you had a role in this when it was hot and heavy and thanks for the pressure that everybody added but particularly your team there. Thank you. And monday morning there's a press conference and there will be vigils of trees being cut down. By the way, every tree is going to be reused. A lot of going to go to smith and bybee lake to become restoration things. And there are trees -- furniture being made out of these trees and there's a tremendous level of depth to the settlement and I wanted you to know.

**Saltzman:** Thanks for your work.

**Fish:** Thanks, walter.

**August 20, 2008**

**Saltzman:** Now the consent agenda. Are there any members of council that wish to remove any items?

**Fish:** I'd like to pull 1173 back to my office.

**Saltzman:** Without objection. Is there anybody from the audience that wishes to pull any item from the consent agenda? Karla, please call the roll on the consent agenda.

[roll call]

**Saltzman:** That brings us to our regular agenda.

**Item 1177.**

**Saltzman:** Item 1177. This is a second reading. The second reading, isn't it?

**Moore-Love:** Yes.

**Saltzman:** Please call the roll.

**Adams:** I wanted to thank the revenue bureau and shane from the city attorney's office. Also warren and kimberly schneider from my office and i'd like to thank the consideration made by the small business advisory committee, Portland business alliance claim of commerce and the Portland neighborhood business associations that have been part of crafting this and have endorsed this change and I know some of you in the room from the real estate industry that were not here at previous meetings, so just -- I want to say to you that there are two loopholes in our business license, your business taxes. One is for insurance agents and the second has been for associate brokers for realtors. And associate brokers, real estate brokers have been paying the county taxes all along. Back in the '80s through effective lobbying you got exempt from paying the city's business license fee and that's great. That's the democratic process, but there's no rationale given for why you would pay the county business income tax and not the city's business income tax. The fact that we're closing one of two loopholes with the real estate agents for associate brokers and we'll pursue closing the other for insurance agents in the state legislature and that money is used to - - and it's about \$125,000. So this is not a big tax increase burden for the industry. Spread across all real estate agents. That will be used to increase the owner's compensation deduction to \$125,000. If you make more than \$125,000 you will be paying additional taxes at the end of this reform. If you don't net more than that, then you won't. We also have used these resources to increase from \$25,000 to \$50,000 the total exemption, so new real estate agents that don't gross more than \$50,000, they will not have to pay anything. So I know the information you've been getting from your association, i've seen it, i'm aware of it, they're doing what they have to do, I appreciate your discourse in this effort. I've gone to your board personally, we've worked on this for over two years and it's absolutely the fair thing to do. So I want to thank the city council for their support of this, and i'm pleased to vote aye.

**Fish:** I want to commend commissioner Adams for his leadership on this issue. This is the next important step on the road to both reforming our business license fee and providing some long over due relief to our small business community. I'm a strong supporter of moving the business owner's reduction to \$125,000 over time. I think the \$50,000 floor is going to be of help to a lot of our small business people. At our last hearing, we heard some concerns about non-resident businesses that had a de minimis contact with the city of Portland. That's an issue that sam indicated he would not -- continuing process take another look at and would be open to reasonable proposals in the future. I intend to take a look at it. Over all, I think this is fair and balanced and does bring us in line with the county and so i'm pleased to support the resolution. Aye.

**Leonard:** Aye. **Saltzman:** Aye. It passes. Read item 1179 please.

**Moore-Love:** 1178.

**Saltzman:** Sorry, did I jump one?

**Item 1178.**

**Saltzman:** Joseph.

**August 20, 2008**

**Joseph Quinones, Bureau of Human Resources:** Good morning. My name is Joseph. The manager of the diversity development and affirmative office for the city of Portland which is in the bureau of human resources. This amendment -- this ordinance amends the contract we have with the immigrant and refugee organization to operate our Portland youth employment program and adds \$28,000 to the contract in order to cover the additional expenses of the increased wage based on the new minimum wage that just came into effect at the beginning of this year. That's what this is for. We have three students that want to speak to you today. Also a number of other students who I would like to recognize, if you don't mind. Works for the city of Portland, please stand up. We have 70 students involved in the program this year. We've had over 400 involved since the program began. Thank you very much. Have a seat. We've had over 400 students attend or participate in this program. We've had a 99 completion ratio and in the last three years, 100% completion. And 100% of completion of this program. I would like to ask Jasmine to speak.

**Jasmine Samples:** My name is Jasmine. This morning, we have three students for a brief word. Thank you for your time and the opportunity to be here.

**Saltzman:** Thank you. Welcome. If you could each just state your name for the record and then you have -- well, tell us what you want to tell us and let's start with you.

**Demetrius Cox-Lincoln:** My name is Dimitri. A student at Lincoln High School, will be a junior this fall.

**Caiyan Su:** My name is Karen Sue and I just graduated from David Douglas High School.

**Sydney Melson:** My name is Sydney Nelson and I will be a senior at Jefferson High School in fall.

**Saltzman:** Which bureaus are you working at? Oh, you have something?

**Melson:** Yeah. So good morning, Mayor and Council members. I'm Sydney, I will be a senior at Jefferson this year. I had the opportunity to intern for the Bureau of Human Resources Affirmative Action Office. It was a new experience for me, because before I worked with IDOS and so the office setting was a new environment. I came to the office having little knowledge of computer technology but my managers and coworkers helped me to learn Microsoft Outlook and Word. I learned a lot about the city and the steps they're taking to become a better diverse and unified agency. I think the Affirmative Action Office are giving a great effort to enforce that. If I could do this all over again, I certainly would, although I would suggest longer work days. Maybe having the option to work up to eight hours a day. I would definitely use what I learned from the city. I was able to use what I learned from the city for jobs awaiting in my future. So thank you, Mayor and Council members, Bureau of Human Resources and IRCO for giving me this opportunity.

**Saltzman:** Thank you.

**Su:** Members of the Council, thank you for the opportunity to speak. This summer I had the wonderful opportunity to work in the office of Management and Finance. Scheduling conference meetings and directing visitors and also helped with projects such as researching for the ongoing efforts to develop government youth portal and evaluating data. Through my internship I've learned vital work ethics and skills from some of the city's most outstanding employees. I practiced professionalism in a work setting and gained a better understanding of real life. The greatest obstacle was the difficulty of internalizing all of the information necessary to assist others. However, I soon overcame this problem. Although I learned a lot from the tasks I completed, the most important things were through my interactions with the office staff. When I helped Sharon file ordinances she also took the time to explain them to me and the process they went through to be passed. When I worked on the benchmarking process, Lisa taught me how to sort through the data. I think it shatters the preconceived notion that many youths have about adults. That they view us as being incompetent in a work session. The most important insight I gained is that the city of Portland really does try to involve youth in the government. Through various efforts such as developing youth portal and other projects that the planning bureau is working on, the city is building a bridge across the invisible gap between government and youth. And it advocates to the

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younger generation. The experience I gained will help me in the future regardless what career I choose to pursue. On behalf of all of the interns, I thank the city council, the bureau of human resources and irco for the opportunity to give back to the community. I would like to thank everybody who provided me with guidance and helped make my intern-truly rewarding experience.

**Cox-Lincoln:** My name is dimitri. I attend benson as a junior. And this summer I interned at the revenue bureau. My focus is on the summer youth employment program in general. I think the program is amazing and you, the council should be proud to be a part of something like this. So many teens in america waste their lives or drop out of high school for various reasons and one of those reasons being not enough interest. But with this program, you can find interest. Kids get to learn stuff they don't learn in school. They get to ask questions and see how government works and get involved. Sorry, in all things like that. And the kids today are the future of tomorrow and very easily with much possibility a kid from this program can very well sit in one of those five seats in the future. And I think the way life is now, we don't want just anyone sitting in those five seats. We want people who have seen and lived through these problems and people who know what they're doing and with this program we're getting kids involved and opening their minds to be something more far significant than a doctor or nba star. Opening their mind object a ambassador. Helps the city and keeps the streets clean and keep people safe and this program has given the students an opportunity to do that. I honestly think there -- they should expand the depth. More hours, more -- a wider variety, wider range of training or -- you know, interns that can be accessible. Maybe even one that can intern for the city council or city hall. You know, because -- sorry. Because -- all right. Well, sorry. Yeah, skip a part, because I actually don't know exactly where i'm going.

**Saltzman:** Happens all the time.

**Cox-Lincoln:** Soon all of you people will be retired and i'm sure you want the city to take care of you the way you took care of this. This program we're making that kind of progress, with this program we're making progress and there are interns ready to accomplish and learn and make Portland and the world a better place. Thank you again for letting me speak.

**Saltzman:** Thank you all. You definitely make us great supporters of the program by your words today.

**Fish:** Let me add, we hear a lot of testimony from people significantly older than you that come before us, and you showed a lot of poise and moxie. And after listen you, i'm convinced we're just keeping these seats warm until you're ready to run.

**Saltzman:** Thank you very much.

**Leonard:** Thank you.

**Saltzman:** I have one question for joseph. We have 70 youth employed this summer.

**Quinones:** That's correct. The first year was 35 and -- but then you funded 70 and that's how many we have right now. The program is operated by irco and they will be operating next year. And based on the funding we have now and their savings and their ability to use the funding efficiently they'll have room for 75 students. And they work 30 hours a week.

**Saltzman:** Thank you. Any other questions? This is an emergency ordinance. Please call the roll, Karla.

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

**Saltzman:** Sorry, I forgot that.

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

**Saltzman:** This is a great program and i'm glad that the council has supported this over the years. And I want to thank joseph and the bureau of human resources and all of these youth that are getting good city experience and weapon you'll consider coming back to work for the city because

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we need people. Young people to be filling the ranks of the city workforce and I want to thank irco too for its great work. Aye. Passes. Item 1179.

**Item 1179.**

**Saltzman:** Good morning.

**Lana Danaher, Bureau of Environmental Services:** Good morning. I'm lana with the bureau of environmental services. I'm here today to introduce the new code that will clarify the 2008 revision of the stormwater management manual and it's announced that it's been completed and will be implemented this fall. The code is simple because it's just a clarification of language. It has a couple of things in it though that I think are going to be pretty innovative and one is the ability to allow us to have shared facilities with private parties. We've never done that. We've always had a clear distinction between them. And these are green where we can work in partnership with private property owners. We also have a section that allows us to be careful about accepting aground water stormwater system from development and this is to codify a practice that's been in place for two years. The most important thing is that the stormwater management manual has been revised. It's come a long way since 1999 when it was first adopted. In 1999 we had to struggle to get vegetative swales considered as a viable option and it was only allowed for a limited application. And now we're requires vegetative facilities for stormwater management. In 2004, we did as well but there was a great number of lack of clarity and there was problems with implementation. The theme of the new manual is all about implementing. We've worked closely with pdot and b.d.s. Staffs that are involved in implementation for new development and redevelopment to ensure that the process can be quick and that it's clear. How to incorporate green street details in public right-of-ways and on private facilities. Which has not been there in the past. We also have adopted a calculator that allows flexibility in the sizing of vegetative facilities to reflect the site conditions and we've undergone in the collaborative effort with water bureau and pdot to adopt street green details for standards on how we will build green facilities in public rights-of-way. I think this has come such a long way that i'm proud to say that this manual with -- manual is out there. We'll be working with b.d.s. and we've started training and it's unbelievable how wonderful the staff of pdot and b.d.s. have been in the last two years in developing this manual so that it's truly a city stormwater management manual that will be recognized as it already is nationally for being so progressive and it's because of pdot, b.d. -- b.e.s., that we're able to do this.

**Saltzman:** Questions?

**Adams:** I want to thank you for why are work on -- this affects tens of thousands of properties and thousands of developers and homeowners. It is a major revision, major improvement. We've been working on it for two and a half years, and you've been the thin edge of the wedge, and it's hard in many cases, tedious work and I want to thank you as an unsung hero for making the city much greener than it is.

**Danaher:** Thank you.

**Saltzman:** I would echo those remarks.

**Danaher:** Thank you.

**Saltzman:** Do we have anyone signed up to testify?

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

**Saltzman:** Anyone wish to testify? This is our first reading. It will advance to the second reading next week. Item 1180.

**Item 1180.**

**Adams:** Could I have the team come forward. Olivia -- is olivia clark here? Michael powell, bruce warner. [inaudible].

**Adams:** Yeah, yeah. I don't think it's a surprise to anyone that our efforts to secure the federal funding for a \$75 million from the federal transit administration for the Portland streetcar loop has been challenging, but the sad irony is that the small starts program was created by congressman earl

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blumenauer, but we're working through this. We've had some incremental success, and the -- president bush's fiscal year 2009 budget request includes \$50 million for our east side Portland streetcar loop project and these are important steps in securing the funding. There's still some political and administrative tasks. The house has completed the markup of the appropriations bill. And they have decided not to release any information to the public and it's likely that congress will not send the fiscal year 2009 to the president until after a new president is in office. They will keep the federal government running through a series of continuing resolutions. Ken rust, who was not able to be here, did send a memo that says the budget appears to be adequate to proceed with final engineering. He scrutinized the worst case scenario to the city. The cost of delay and the contingent built into the project. I appreciate his tough questions and feel confident that the project team has met his concern. Ken believes the risk to the city is minimal because they've confirmed, includes the final engineering phase and that all those costs retain eligibles as a match for any future federal grant as well as for strong support for the federal funding. The final engineering for this project is a valuable investment for the city's infrastructure and improvement to our transportation city. Based on the recommendation, I offer the ordinance to proceed with final engineering for the east side Portland streetcar loop. This is an emergency ordinance because the additional 30-day wait for a non-emergency ordinance would result in \$500,000 additional cost due to inflation. So did I read that too fast? Ok. So i'm going to turn to you, vickie.

**Vicky Diede, Portland Department of Transportation:** Just briefly I wanted to remind council that last march the council approved the contract amendments of Portland streetcar inc. For final engineering, however there were conditions placed on the notice to proceed, and indicated that it would not be issued until ken rust, the chief administrative officer and commissioner Adams, the commissioner of public utilities, believed there was a high likelihood we would get the federal funds and defined that the level of confidence would be demonstrated when the federal transit administration issued a finding of no significant impact to the environmental assessment work -- in the parlance, it's called a fonsi. The second condition was they issued a cost effective rating of medium or better on that there was a notice of congressional. It was signed by the administration on july 2nd. In early june, the federal transit administration notified metro it could not need the cost effectiveness criteria and we should stop trying to do so. This was despite a prolonged effort by metro and tri-met to provide information to the contrary. However, they contacted and gave assurances to the Oregon delegation he would seek another avenue to provide funding. That has remained nebulous up to this point in time. As commissioner Adams indicated, the more progress has been made on the appropriations side. But since the federal transit administration funding participation is capped at \$75 million, minimizing further delay to the schedule beyond the two-month delay we're currently in the middle of -- I mean, it would become the responsibility of local funding because we're seeking the full \$75 million from f.t.a. So we developed a contingent funding plan that does two things. One, it provides the resources needed to fund final engineering and uses only local and regional funds included in the adopted project budget and in amounts that do not exceed the current fiscal year's budget. The second thing it does, and this is kind of the worst case scenario. In the event that no federal funds are forthcoming, it provides a way to allocate all of the costs for final engineering, plus the projects costs incurred to date for conceptual planning and preliminary engineering in a manner that makes it legal for us to seek reimbursement from sources. This becomes important because of the legal requirements of tax increment funds and how they can -- increment funds for the Broadway bridge, which is not in any urban renewal area, and based on their respective share of the total project cost excluding vehicles. This defines each and how we can make this work. This only becomes important if the smart grant is not approved and terminated before construction. It would seem sensible to understand the situation so that the project can be legally reimbursed for the expenditures. It will only become a local obligation we would ask the council authorize the notice to proceed. Thank you.

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**Adams:** Thank you.

**Saltzman:** Bruce.

**Bruce Warner:** For the record, bruce. A few things I would say, you know my transportation background and I think in conversations with ann bates, and governmental relations director and others on this project, I believe that the funding will be here for this project. It's just a matter of when and I think it's prudent to move forward with a final engineering at this time. I want you to know we have budgeted our share of the project amongst the various urban renewal areas as she's outlined and remind the city council that we did work with commissioner Adams and p.s.i. And pdot on a risk analysis so that this project, really made sure that the costs were good and solid and no risks that we had not identified so far. And i'm pleased to remind you that that risk assessment, the statements and timing are sound. The only real risk was, again, the federal funding and the timing that. And if there's anything I know from moving major capital projects forward, the longer it takes to do the project, the more it's going to cost. Moving forward with the final engineering at this time is prudent and advisable to keep this project moving and not have delays in the project, which will again minimize the cost. With gas at \$4 a gallon, you need to be aware that we're talking with businesses who are continually seeking to relocate to places along routes of alternative transportation. Bus route, loyal or streetcar and I think you're going to see that more and more as the price of fuel continues to escalate. We need to have this project and I think this is a way to keep it moving along and minimize the risk of delay.

**Adams:** Thank you, michael.

**Michael Powell:** Michael powell, thanks for the opportunity. I chair the Portland streetcar inc. Board. It's been a wonderful project. It's an important day. It's a step, but a very significant step and a realization of a vision that dates back to the central stiff plan that we would have a streetcar loop around downtown. I would like to take this opportunity to tank the city staff. Commissioner Adams' office. Pdot, tri-met, metro, the staff of p.s.i. and the pdot folks on the city's east side who met on a volunteer basis to see this project through. Through the preliminary engineering and now on to final engineering. Those folks have shown real citizenship and you should be proud of them. As you know, the streetcar links to south waterfront, to the pearl, up to northwest Portland and good sam. This would afford us the opportunity to join that linkage to the lloyd district, convention center, the rose garden, and omsi and across the new bridge back to south waterfront. It's a bold and brilliant vision. Close to 4 million will ride it this year. That's almost capacity. We've had \$3.35 billion of development within a block of the streetcar. It's been a success on all levels. We've had national attention and we're a leader in this world. Some 70-odd cities have joined together in a coalition to break the dam that has been put up. May you spend the rest of your life negotiating with the f.t.a.

**Adams:** That's part of my life right now.

**Powell:** Hopefully not much longer. Fortunately, our congressional district members have stepped up. Senator smith's and wyden's offices to see this through the authorization process in congress and I have a strong conviction this will be funded and we can go ahead on time. Time is not our friend because of the rising cost of materials and the need to move expeditiously. I urge your adoption and look forward to the final engineering and announcing the beginning of construction and getting your support for that. Thank you very much.

**Saltzman:** Questions? Thanks. Do we have anybody who signed -- signed up to testify?

**Moore-Love:** One person. Chris smith.

**Saltzman:** Anyone else in the audience that wishes to testify? Ok, chris. Give us your name and you have three minutes.

**Chris Smith:** Good morning, members of council, i'm chris smith and i'm here in my capacity as chair of the citizen advisory committee for Portland streetcar and the registered representative of that committee. The c.a.c. doesn't typically get into financing matters so wearing that hat, I can't

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speaking to the specific risks to the federal funding, etc., but I would like to convey the extreme enthusiasm to see this commence. To bring the benefits that the streetcar has brought to the west side to the east side. In terms of walkable neighborhoods in an urban environment that's a pleasure for all users. Wearing my hat as a board member, I would like to speak to the physical issues many there's no question at this time -- the fiscal issues. We need to get this moving. It's the fiscally prudent thing to do and I urge you to support the ordinance. Thank you.

**Saltzman:** Thank you. Ok, this is an emergency ordinance, to please call the roll.

**Adams:** I want to thank the good folks at pdot and p.d.c. and sean and -- shoshanna and the Portland streetcar ink and carter. Aye.

**Fish:** I'm going to support this ordinance and i'm a strong supporter of the east side streetcar loop. I would like, though, to place a related concern on the record. It's on a matter i've had a chance to talk to the mayor-elect about. It may come as a surprise in the challenge of the so-called friends to urban renewal ooh to the river district plan amendments shall specific elements of the challenge to the expansion of the district -- and this is separate and apart from the controversy generated over the so-called satellite district to david douglas -- specific challenges in the appeal include a claim that there has been an insufficient showing of transportation inadequacies which would in the judgment of the so-called friends of urban renewal mean that we should not proceed with any streetcar plans funds by tiff. Insufficient showing of the -- in the old town, chinatown area, according to the friends of urban renewal lead to the cancellation or reprioritization of funds that are currently dedicated to the resource access center and an insufficient showing of inadequacies in affordable housing, which would place no fewer than six projects that this city has signed off on at risk. In other words, in addition to challenging the extension of the boundaries and challenging the findings of blight, the so-called friends of urban renewal have staked out a position that they, not this body, should be making judgments on how to prioritize tax increment financing money within the district, and as a result of the appeal, which has been filed with luba, where we have a notice of appeal, appeal to follow, the Portland development commission has notified the community that there could be as much of an 18-month delay in meeting our commitment to building the resource access center and the projects that are central to the deal that this council struck with the community. And in meeting the needs of low income and vulnerable individuals in our community. I fully understand why the so-called friends of urban renewal have picked a fight over satellite districts. I think we all acknowledge there's some gray in that issue, and that issue may appropriately be framed for consideration by luba and possibly by a court. But to append to that appeal, a challenge to the new boundaries of the river -- boundaries of the river district urban renewal plan and challenge our authority to make decisions about planning, social services and low-income housing and the effect of that action to potentially delay by up to two years progress which we have committed to, to me is unconscionable and I want the public it understanding that this is not just about satellite districts to david douglas but it's a challenge to this body about how to use dollars to benefit our community. I'm pleased in my conversations with the mayor-elect, he strongly shares this concern, and particularly with respect to low-income housing, which is part of my portfolio, has agreed to work to address this injustice. We have an emergency ordinance before us today and as I said earlier, i'm a strong supporter of the east side loop and I do not want to put a barrier to moving forward with this proposal, but I would also notice that to the extent there's any tax increment financing which would be a back stop to this proposal. This loyal is outside of the existing boundaries of the river district urban renewal plan and there are projects which this council has prioritized which apparently will be placed on hold because of an appeal which in my judgment has no merit. With that statement of concern, i'm pleased to join with the mayor-elect in supporting this particular resolution. I think the case of the streetcar has been made and we need to proceed. But I want the public to understand that the fight that has broken out over the river district urban renewal plan is no longer a fight about a school in david douglas, but it puts at irk the fundamental question of who

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is going to make the judgment about the use of tax increment financing dollars for the most vulnerable. Aye.

**Leonard:** I agree with everything that he said, except there might be a conflict in the satellite districts. Aye.

**Saltzman:** I appreciate his comments too, but i'm pleased to support the final engineering for the east side loop. I think if there's some risk, I feel confident our congressional delegation and commissioner Adams have been working hard and we'll be ultimately rewarded sometime hopefully there 2009. I think this is a risk well worth taking. Aye. Our next item is 1181.

**Item 1181.**

**Saltzman:** Commissioner fish.

**Fish:** This is an issue which in past years I think would appear on the consent agenda because it's a relatively non-controversial matter involving the contractual agreement between the city of Portland through the bureau of housing development and our partners at the Portland don't commission in which we set forth the obligations for -- by p.d.c. To provide rental housing development on behalf of the city of Portland, but in this particular moment, we chose to put it as a regular agenda item for two reasons. One is that I wanted to publicly acknowledge the collaborative work and the true partnership that exists between us. This was not a contract without a few hiccups along the way. There's a good working relationship. This contract reflects the product of a lot of hard work and positive relationship that exists. And second, to the extent that in this fall -- my bureau, bhcd, will be making presentations on a series of housing matters including sustainable budget, a proposal for how we may modify housing incentives for middle income housing and a vision for our housing going forward. I thought it would be appropriate to put the contract as a regular item in case members of the council had any questions. I've asked the two lead players in this just to make brief comments and i'm pleased to introduce will wright.

**Will White:** Thank you, commissioner, and good morning to all of you here on city council. i'm pleased to be here today to speak briefly about this relationship with the p.d.c. It spans three decades and it's our larger contract. This is our larger single contract at \$11.3 million. History of the contract is that for most of those 30-some years, this has been p.d.c. has acted as the implementer of the federal funds. But over the last 15 years, the city council has seen fit to put it into the housing agenda and p.d.c. has been the implementer of the city money as well as the federal money. The scope of the contract includes housing development which is underwriting and construction management. And also the loan services for the loans made and the asset management of the affordable housing that we consider an essential part. So i'd call out three themes that underlie this contract. I've talked at some extent with both commissioner fish about accountability and efficiency and we're looking how these two agencies can work as closely together as possible, that we have clear accountability of what we're asking to have done and good data coming back so we can report to city council about our accomplishments on an annual basis and finally, make sure that we're making the most effective use of these public funds. And we're engaged in a study of the local housing system and we're amongst the funders and sponsors of that. Reexamination of our housing system and later in the fall we'll talk more about city council about that. With that, that's just the -- some of the major points I wanted you to be aware of and we look forward to beginning another year working with p.d.c. to implement this housing funding. Thank you very much.

**Komi Kalevor:** Good morning, my name is Komi, interim housing manager at p.d.c. On behalf of bruce warner, i'm pleased to join to request that you adopt this contract. For \$11.3 million. These are the federal fund that's enable the p.d.c. staff to work on affordable housing projects citywide and we've done a couple of projects in gresham as well. I might say that -- Multnomah county. It's been a long-term relationship. Nearly three decades. As will mentioned in his remarks and this partnership has had a share of challenges but we've worked through them successfully and with

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commissioner fish, work toward efficiencies and stronger partnerships. As will mentioned as well. So with that, I thank you very much for your time.

**Saltzman:** Questions? Ok. Thanks. Is there --

**Fish:** Closing comment --

**Saltzman:** I wanted to see if anyone wanted to testify. Nobody signed up to testify? Go ahead.

**Fish:** There's been a study that has been under way to consider a system wide restructure of how we deliver housing in this community. By adopting this contract, we're not in any way limiting our right as a body at some time in the future to consider a restructure. We technically can contract with whom ever we want to deliver our services. We continue to partner with p.d.c. but if the council has an appetite for restructure, this would be revised accordingly. But I wanted to acknowledge that this was not an easy contract to close out but i've been impressed by the spirit of cooperation between the parties and I want to acknowledge the good work of comi, tony barnes and, of course, bruce warner. And then my team, thank will white, andy miller, daniel and steven for all of their good work. I believe based on the experience of the negotiations over this agreement, that there really is a new spirit of cooperation and partnership. And I will say publicly what I said privately when we discussed this, it really doesn't matter what's in black and white, what matters to me is how we, as parties, interpret our mutual obligations and how we interact going forward. And the most important test to me of the relationship is how we interpret and enforce this agreement going forward and I believe there's a new spirit of cooperation and I look forward to building on that. Thank you.

**Saltzman:** Please call the roll. It's an emergency.

**Adams:** I want to thank you for your work and I want to associate myself with commissioner fish's concluding comments and add that as part of my transition efforts, work, mayor-elect to mayor, i've asked him to complete a review of the whole issue of housing. Look forward to receiving that assessment in the fall. Aye.

**Fish:** I'm proud of the work of the two gentlemen before us, and we have a regular cabinet meeting that meets at least monthly where we bring the chiefs of the various housing entities into a room and buttheads and plan together and -- butt heads and it's a way we're going to move this agenda and particularly at a time of strains and political challenges. Aye.

**Leonard:** Aye.

**Saltzman:** I look forward to investing this over \$11 million and producing affordable housing the most efficiently as possible and also pursuant to our p.d.c. affordable housing green building guidelines as well. Pleased to support this. Aye. 1182.

**Item 1182.**

**Saltzman:** Jennifer, are you going to --

**Jennifer Porter, Office of Sustainable Development:** Sure.

**Saltzman:** -- introduce yourself for the record.

**Porter:** Great. Good morning, i'm jennifer porter at the office of sustainable development.

**Greg Jones, Portland Department of Transportation:** Greg jones with the office of transportation.

**Saltzman:** Tell us about this.

**Porter:** Yeah. Before you is an intergovernmental agreement with the Oregon department of transportation to administer transportation funds for diesel outreach center. We've been working with pdot to administer these funds from odot for a diesel outreach center. This will be a great opportunity to work in an innovative partnership. To improve air quality while saving on fuel costs. The center is at the jubitz truck stop and expects to serve truck owners. The contract for this funding to cascade sierra solutions which is a Oregon non-profit to staff and operate the facility.

**Saltzman:** Did you want to --

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**Jones:** I would like to add that we're doing this agreement and test project under a test program with odot and through the highway administrations. This is the second one we've done for professional services. Union station with b.g.s. Was the first. We've entering a new territory where we don't have to negotiate these contracts through odot and we're gaining efficiencies and cost savings by doing that. And this has been a great partnership and looks like it's going to move forward quickly here.

**Saltzman:** Thank you. Questions?

**Leonard:** I'm curious, as the owner of a diesel vehicle, what is a diesel fuel reduction market outreach program mean?

**Porter:** The unique thing about the program, it brings together various options for these long-haul truckers. Involves auxiliary power units for them to be able to put on to the vehicle so they don't need to idle the unit. And the air dynamics. And there is diesel emission reduction filters that can be put on. The outreach center is part of a program through e.p.a. --

**Leonard:** You said diesel reduction filter. Did you mean --

**Porter:** Particulates. It's a package to save emissions and fuel. So the operators can choose the options they would like.

**Leonard:** It's designed for big trucks?

**Porter:** Yeah, long-haul.

**Adams:** Not jeep liberties.

**Jones:** These are being implemented to retrofit school buses and I believe lain county has a program -- lane counties. But there are very few in the country.

**Adams:** I'm commissioner in charge of diesel filters.

**Saltzman:** Thank you. Anybody who wished to -- signed up to testify or wishes to testify in this matter?

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

**Saltzman:** This is an emergency. Please call the roll.

**Adams:** Thanks for the work. Aye. **Leonard:** Aye. **Fish:** Aye.

**Saltzman:** Yeah, this is really good work, so pleased to support it. Aye. Next item is 1183. Would you also read 1184 since they're both related.

**Items 1183 and 1184.**

**Porter:** So again, putting on my other hat, residential recycling coordinator. These are not necessarily common transfers such as these but they are routine and we had two companies coming in at the same time to ask for such transfers so this is not really anything out of the ordinary, but I'd be happy to answer any questions that you might have.

**Leonard:** I've been asked by a few people and I have actually confronted this dilemma myself. We've got great new recycling bins.

**Porter:** Right.

**Leonard:** And more specifically, the yard debris. What are we supposed to do with the old ones?

**Porter:** Some people keep them for extras because they will have more than what can fit in that cart which you can than put out at the curb for an additional charge. Or if you just don't need them and you don't want to have them any longer, we have depos set up where you can take them. We can get you that information.

**Leonard:** That would be really appreciated.

**Saltzman:** For the yard debris. There was one already, so --

**Porter:** We can get that to you.

**Leonard:** Much appreciated.

**Fish:** Even though randy's garage is the size of my house. He's still fighting with clutter.

**Leonard:** You fill up anything.

**Adams:** Talk about a green builder.

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**Leonard:** Let's stop right here.

**Saltzman:** We should add for the record -- [inaudible] people who wish the yellow bins picked up, can put them at the curbside with a note to the hauler to take them away.

**Saltzman:** Thank you, jennifer. These are both first readings.

**Porter:** Right.

**Saltzman:** Nonemergency. So move to a second reading next week.

**Porter:** Thanks.

**Saltzman:** Our final item. 1185.

**Item 1185.**

**Saltzman:** Without objection, it will be returned to the auditor's office.

**Adams:** If I could take a point of personal privilege. I want to welcome back to city hall a member of the fourth estate. And glad to see him up and around. James mayer from the Oregonian. Hiding behind the post.

**Leonard:** Oh, hi, jim. It's great to see you. Thanks for doing that.

**Adams:** To make you feel really welcome and back at home. Everything you've heard in this room is off the record. [laughter] thank you.

**Saltzman:** Good to see you, jim. Ok. We have no further business until -- we're adjourned until 2:00 Thursday. [gavel pounded]

At 10:41 a.m., Council recessed.

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

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

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

**AUGUST 21, 2008 2:00 PM**

**Adams:** It is indeed a sad day for portland someone who has served the people of this city with incredible focus and enthusiasm and compassion. Someone who can retire knowing that she has literally helped thousands and thousands of folks through tough times get to better times is retiring. And she leaves huge shoes to fill, and so as the presiding officer at today's meeting, I'm incredibly honored to read a proclamation. I'm sure others have some things to say. Please come forward so we can embarrass you. I would say in the spotlight, but commissioner Fish made us take them down. So in this candlelight this is a proclamation signed by mayor tom potter and it reads Whereas Portland prizes its citizens who continually take on the task of helping others and whereas margaret bax has spent her career working for the betterment of the city of Portland, and whereas as her dual role as housing policy manager for the city and the Portland development commission is a passionate advocate who can be credited with producing and preserving over 15,000 units of housing for low-income families, seniors, and people with disabilities, including over 1,000 units of low-income housing in the river district, and whereas margaret has helped to increase the awareness of the need for affordable housing across our region, and whereas margaret backs has helped the city exceed its metro 20-40 Growth management targets, and whereas margaret backs has helped the city implement its 10-year plan to end homelessness, include laying the ground work for the resource action center, and she played an instrumental role in assembling local funding for Portland's two hope vi projects transforming columbia villa and nuke and irish court into humboldt garden, and where her advocacy for a permanent stable source of funding for affordable housing has inspired other advocates who will carry on the work in salem and statewide, now therefore tom Potter, mayor of the city, does hereby declare august 21st, 2008, as an official day of appreciation for margaret backs, and in Portland, and all over the world, and encourage all residents to observe this day. Congratulations. [applause] we'll get picture with you in a minute. With the certificate. In the mean time, does anyone on council want to say anything?

**Leonard:** Of course I got to work with margaret a lot. Especially when commissioner Sten was here. Just what a great asset you've been for everything that the mayor wrote in the resolution, but just on a personal level, it's been really a joy to work with you. I appreciate so much of your work. And I know you're going to have a good time.

**Margaret Bax:** Thank you.

**Adams:** Margaret -- .

**Fish:** We inherited each other. You are the city's policy director for housing, and i'm the city's housing commissioner and have bent last eight weeks. And in those eight weeks you've helped me understand all of the gnarly issues. I don't know where that -- why that word comes to mind, but i've come to learn about all the gnarly issues that I spend your day unwinding. Low-income people in this community have no greater friend. When the row source access center is built, it will be built largely because of your efforts. When veterans have housing in sowft and a place to live in dignity, it will be largely because of your efforts. Whether we have a regional housing strategy and a revolving housing fund, it will be largely because of your efforts. When we celebrate the completion of the 10-year plan to end homelessness, and finally find a permanent housing solution

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for all the folks and fellow citizen who's live on the street, it will be largely because of your efforts and the fruits of your efforts are already on display in places like the new columbia, where hundreds of people now live in dignity and with renewed hope for the future because of your work. I'm going to reserve most of my more embarrassing comments for tonight's celebration party that I will be attending with you, but I want to say on behalf of the housing community as the housing commissioner for the city of Portland, a heartfelt thank you for all of your good Work. [applause] would you like to say anything?

**Bax:** I'll probably start crying. Thanks. I didn't expect it. Big surprise. Appreciate your comments. The only thing that I can say is I feel extremely lucky to have been able to been most of my career working with people and on issues that I care a lot about and particularly the issues that truly are a passion for me. And this -- I just am thrilled, when I look back at what a terrific opportunity that i've been able to have, and just thank everyone who has allowed me to be part of this whole Portland process. So thanks.

**Adams:** Can we get a quick group picture? [applause]

**Adams:** City council will come to order for our thursday, august 21st, session. Please call the roll. [roll call]

**Adams:** Do we have any up front, anything you need to say on anything? Karla please read item 1186.

**Item 1186.**

**Adams:** Chris.

**\*\*\*\*\*:** I'd like to start with the Boyl claim if I may as Mr. Boyl is here right now.

**Adams:** Ok. So that would be --

**Moore-Love:** 1187.

**Item 1187.**

**Chris Dearth, Portland Parks and Recreation:** Good afternoon. My name is chris dearth, i'm the city's measure 49 program manager. I'm here to present the first of four measure 49 claims that we have. Just by way of a little background, under measure 49 the city is obligated to reexamine all of the approved measure 37 Claims that you approved over the course of the last couple years. And these four are four of seven that were approved previously. If you recall, one of those seven was the baker claim that you've already decided had vested rights, so that's one out of the way. We'll have four more today and two more in coming weeks and months. So starting with the boyl claim, the council first heard this claim in february of 2007 and now you are reconsidering it under measure 49. This claim is located in the southwest hills neighborhood. It is located on southwest high street between terrace drive. It's in the r5 zone, the lot is 8400 square feet, and as you can see, the neighborhood is a mixture of large and square -- and small lots. The boyls sought an adjustment, they wanted the ability to seek an adjustment to allow a greater density on their property to allow them to subdivide and have one additional property and house on their property there. Here's an aerial photograph of the property. You can see the house is on the north end of the property against high street. The southern side of the property on terrace is undeveloped. Here's a photo of the southern end abutting terrace drive. The regulations which the boyls challenged in their measure 37 claim were these two, which prohibited them from seeking an adjustment to subdivide their prompted they're in an r5 zone, Which means they would need 5,000 square feet for a second lot. When they purchased the property they could have sought an adjustment to subdivide with the 8400 square feet that they have. The law was changed to not allow them to do that. They challenged it. You agreed they had lost some value and granted their claim and allowed them the ability to seek an adjustment, not necessarily to receive one, but just to seek one under the normal procedures. At that time you concluded that the boyls had an avenue -- at the time of their purchase an avenue to request relief to the density standards on their property, and that that avenue had been closed to them and the use of their property has been restrict and that's why you granted

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the claim at that time. You approved the claim and approved an order to not apply those two regulations that they had challenged. Now we'll move on to measure 49. We need to reexamine this claim under measure 49, and it requires the city to send out a letter informing am of the approved claimants -- claimants of their rights and the information that we needed to process their measure 49 claim. We did that on march 5th in a timely way. Mr. Boyl received this letter along with the other claimants. But he did not respond in the 90-day period the statute allows him to do so. So i'm going to run through very briefly for you the 11 criteria that measure 49 requires us to Examine these claims. First the claimant has to be an owner of the property, the boyls certainly are. All owners must consent to the claim. They have. The property must be within the u.g.b. It is. The dwellings, they must show the dwellings were allowed at the time of acquisition, and that was the case. They have to show that the property is zoned for residential use, and that is the case also. And they need to show that one or more land use regulations prohibit establishing a single family dwelling. And you at the time that you decided the measure 37 claim, decided that in a way they were prohibited from establishing a second single family dwelling because they were prohibited from seeking an adjustment to allow that land division, and the second lot on their property. They need to show that the challenged regulation is not exempt under 49. Measure 49 has very similar exemptions. The main one being public health and safety regulations are exempt. And in this case these regulations are not. The challenged regulation, he needs to show that the challenged regulation was enacted after the subject property was brought in. I pertains to metro and not to cities. J is the challenged regulation was adopted after the property was next to the city and that is the case here. And k, the challenge regulation reduced the fair market value of the property according to an appraisal conduct as required by measure 49. Measure 49 has very precise requirements as to what is required for an appraisal. And that's primarily what we'll be talking about today and what's in contention, because mr. Boyl did not submit real estate appraisal in a timely way. He did submit one to me yesterday at 5:00. But it was not within the 90 days the statute requires. So he'll be here today to tell you more about that. And then finally, the claimants need to show that the highest and best use of the property must have been residential at the time of acquisition, and that was certainly the case here. So to summarize, mr. Boyl meets all of the requirements of measure 49 except k, the real estate appraisal requirement. Mr. Boyl did submit an appraisal yesterday at 5:00. I've had a chance to review it. That was due on june 3rd, within 90 days of when we sent him the letter. So he did not submit that in a timely fashion. He contacted me a couple of weeks ago on august 5th to give me an explanation as to why he did not. He'll explain that to you himself today. And then as I said, I received his appraisal yesterday. Unfortunately we did not have time to review this appraisal as we normally would, and we've received a couple of others on claims that you'll be considering in the next couple of months normally we'd take this to our contracted appraiser and have them review it and make sure it meets all the requirements of measure 49 and that it's accurate and that it's -- it produces the proof of loss of value that we need to grant a measure 49 claim. So unfortunately we did not have time to review this or have our appraiser review this. And I looked at it myself, but certainly i'm not a real estate professional. So just to summarize, the appraisal that mr. Boyl I think will describe in a lot more detail, under measure 49 claimants are required to show the value one year before and one year after the challenged regulation. In this case the regulation came in place in july 1 of 2002. So therefore he needed to provide us with appraisal values for july 1, 2001. He did that, at \$450,000 for the home and \$130,000 for the additional home site that could have potentially been requested there. For a total of \$580,000. Then second he needed to provide an appraisal for july 1, 2003, and he -- that's one year after the regulation. He has done that, the appraisal estimated the value to be 535,000 dollars with an alleged loss the difference between the two being \$45,000. But under measure 49, the claimants are required to take That value from in this case 2003 and bring it forward to 2008 dollars by using a t-bill index. He didn't do that in the formal appraisal, though he did submit that

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to me midday today, and I didn't have time to insert it into my presentation. He'll probably talk about that when he comes up. In addition, the appraisal doesn't calculate the value added if Mr. Boyl is granted the ability to request an adjustment now to allow a land division. So the current appraisal doesn't include that kind of calculation which would be required. And you'd have -- he'd have to show allowing him the ability to appeal for an adjustment to subdivide his property is just compensation for his alleged loss. Under measure 49, the city does not have the option as we did under measure 37, to provide monetary compensation. What measure 49 requires us to do is to estimate through the appraisal process that I described, the loss, the estimated loss before and after institution of the regulation, and then compensate the claimant by granting additional single family residences on the property. So we do not know what an additional single family residence might allow -- what it might be worth in today's dollars. So we know if we take his numbers -- and I have no reason to doubt his numbers, but I can't verify them -- if we take his numbers, his alleged loss in 2003 was \$45,000, we don't know if an additional house on his property nowadays would be comparable to that \$45,000 loss. He has to show us what is granting him an additional house would be worth in today's dollars to make up for this loss that the city has allegedly taken from him. I know it's complicated. Did I explain that clearly enough?

**Leonard:** You have. But I don't know why that's relevant if he's not making a claim for compensation, if he wants to build the house, why can't we have an agreement where he would waive claims against the city on the condition we allow him to build the house?

**Dearth:** You can waive the regulation, as did you under measure 37. But the waiver of the regulation has to be comparable, commensurate to the loss. So -- I'll make an exaggerated example for you. His loss was \$45,000 or perhaps more. And what if granting him the ability to build an additional house on his property increased the value by a million dollars? I'm sure that's not the case. That would be a million dollar comparable compensation to him for a \$45,000 loss in previous years. So I'm exaggerating the numbers.

**Leonard:** That's not allowed?

**Dearth:** My reading of the law is that it's not allowed. I'd let Katherine address that as well.

**Leonard:** Can't we stipulate to what the value is, and agree that's the value and call it good? It seems like an academic exercise if all they want to do is build a house.

**Dearth:** It is an academic exercise. This is a complicated law that we're struggling to try to understand, and implement. And that's our interpretation of it. Katherine, if you can add more, please do.

**Kathryn Beaumont, Sr. Deputy City Attorney:** I think all I can do is rephrase slightly what you said, which is under measure 49, you don't get money, you get the right -- the -- what you get in relief has to be equal to the value of what you lost. And so in this case it's the value of what's been lost doesn't translate into the value of an additional residents, measure 49 would suggest that relief is not available.

**Fish:** Let me follow up on Randy's point. If the claimant has missed a statute of limitations, and therefore there's a clean basis just to deny the claim all together, does that give us a basis just to stipulate to a relief that the claimant would agree to in lieu of having the matter dismissed?

**Dearth:** I can't answer that Kathryn can you answer that? You're correct, he did miss the statutory deadline.

**Fish:** There's a statute that says have you 90 days.

**Dearth:** Correct.

**Fish:** Is there anything that says that can be waived?

**Beaumont:** No. The statute provides procedure for rereviewing claims, and it has certain points in time that certain actions have to take place. It doesn't specify a consequence if you fail to meet --

**Leonard:** It doesn't say you can't proceed with the claim. What it said was, by a certain date you'll make a decision based on the evidence you have.

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**Beaumont:** That's correct. We have an outside limit of 300 days, until early October to make a decision.

**Leonard:** Why can't we just stipulate that, ok, these are what the conditions are, all the sides agree the information at whatever given point in time indicated, and agree that here's the settlement, you can build a house.

**Beaumont:** I can't stop you from doing that.

**Fish:** My guess is the only -- the statute says you have 90 days. But doesn't specify under what conditions we would grant relief beyond 90 days. So presumably if the claimant for 90 days was unconscious at the hospital, subject to the usual rules, we would extend the time if they didn't receive the letter, or some traumatic event. So yes would use those normal rules to extend. So 90 days as elapsed, we have not heard from the claimant as to why he did not respond. He has a right to make a presentation. But without the appraisal, on what basis can we determine what the value of the loss is?

**Dearth:** The appraisal is the basis for that, and he has provided it with the shortcomings that I pointed out. I emailed it to your staff. He will elaborate on his appraisal, so that's the only basis that we do have.

**Fish:** Since we're talking out loud, is it within the scope of our Authority to say if you don't get a timely appraisal in, but you have some explanation, we could if we chose to, just overlook all together the question of the value of the loss and simply give as the sole relief the right to go partition?

**Dearth:** I believe you can do that.

**Beaumont:** The relief you granted before was the relief to waiver of the regulations that prohibited them from applying for an adjustment to reduce the minimum lot size. I don't know that you would want to be granting any greater relief than that. But measure 49 did change the scheme in terms -- for at least for previously approved measure 37 claims. It made the sole remedy the right to have additional single family residences. And it measured compensation in terms of being able to show that the value you lost was equal to the value of the additional single family residence that you wanted. So it did change --

**Fish:** I see. So now I think I understand the problem. If the value -- if the quantifiable value of the loss was really \$45,000 plus or minus, the relief allowing them to subdivide, build a house, could be greatly disproportionate to the actual demonstrated laws. Is that your point?

**Dearth:** Exactly.

**Leonard:** \$45,000 was 1960s?

**Dearth:** 2003.

**Leonard:** Oh, 2003.

**Dearth:** Yes. It would be a little more than that if brought up to 2008 dollars.

**Fish:** The problem I have with that is that by not putting in an appraisal, we may be granting a windfall by allowing someone to proceed and get a benefit that's disproportionate to what the appraisal would have said was the loss.

**Dearth:** That's exactly right. But let me -- in Mr. Boyl's defense, and he'll explain this further, what you would be granting him is not necessarily the subdivision of his property, he would be granting him the ability to seek an adjustment. It's not a certain -- it's not certain that he would receive that adjustment. He just wants the ability to seek it as he had when he purchased the property. So there's some chance, some risk he would not get that adjustment.

**Leonard:** I want to understand this \$45,000 figure. The \$45,000 loss really would be calculated in terms of the value of a residence he built, not on the market value, but the difference between what it would cost him to build it and the market value. Isn't that correct?

**Dearth:** Correct.

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**Leonard:** So we have to make sure the \$45,000 is thought of in the context of that. So it would cost an individual so much to build a house with the labor, the sticks and the mortar, but that's not the value -- that's not the profit, the profit would be whatever they sold it for above that.

**Dearth:** What we're granting him is the ability to seek an adjustment for a developable piece of property. And then what he does with that developable piece of property is his choice, and then you're correct, then there are some expenses involved.

**Leonard:** It just seems to be overly academic. I think we could -- to an actual point, we could stipulate the value of the construction of the house wouldn't result in more than a \$45,000 profit adjustment for inflation to 2008 dollars and be good.

**Adams:** Why don't you finish your presentation.

**Dearth:** I'm almost finished. My conclusion is that Mr. Boyl didn't submit the required documentation in a timely manner, and the appraisal has not been reviewed by our professional appraisers. And it's not clear that the granting the ability to appeal for an adjustment is in fact just compensation for the alleged loss. So I would recommend for those reasons that you deny the Boyl measure 49 claim.

**Adams:** Any other questions from council? All right. Do we go to the -- to Mr. Boyl for a set amount of time? How much?

\*\*\*\*\*: [inaudible]

**Beaumont:** I don't know that we have established any time limits --

**Adams:** Mr. Boyl or your representative, do you want to come forward? We'll start with five minutes, see how that goes. If you need more time, we'll take it. Welcome to the city council chambers. Please state your name for the record.

**Robert Boyl:** I'm Robert Boyl. Property owner and my wife Jane, also a property owner.

**Adams:** I think we're interested in learning about the apparent failure to provide us with the appraisal and also your -- you're welcome to make any other comments in response to Chris's presentation.

**Boyl:** Sure. I've been in contact with Chris recently and he's very helpful. So I don't take any pumpkin barrage about -- umbrage about him representing his position. I would like to say that as Commissioner Leonard said, I believe this is a I have, very confusing statute. I don't know fits called a statute or a measure, whatever, but when I read the letter on March 5th, I truly believe that I had already met all of the requirements. And I have the letter here if you'd like to see it. There's only one requirement that is being discussed here, and that's the one about providing an appraisal. In my measure 37 claim I was allowed as a property owner to create my own appraisal, which I did, which was submitted and the claim was approved. So I mistakenly thought the appraisal in my claim was adequate. It does say as outlined in measure 49 and to be frank, I thought I read that measure, but it's -- I don't know if you folks have read that, but it's very -- you have to be a lawyer to truly understand it. And perhaps I should have hired a lawyer to do so, but I did not. So we missed that milestone, and I truly believe it was a mistake. And then when the letter came that allowed us 15 days to respond, I was out of town, we were both out of town in Canada. My son was house sitting for us, he threw our mail in a paper bag and we -- I'm sure it happens to all of you -- and the postcard came, and we looked at the postcard and went -- and then we went throughout bag and found the letter. And then I read through the letter and on the third page it said recommendation of claim denied, something to that effect. And I got back as quickly as I could, and made contact with Chris. And then in good faith we have scrambled to get an appraisal. We got one, we put it together, and I believe it met all the requirements. I took -- hand carried it to Chris yesterday, and the one requirement that Chris noted that we didn't meet, we got that taken care of today. I went back to my appraisal and he -- and I said we have to provide -- we have to show that \$45,000 in current value. And we also have to tack on the cost of the appraisal. It also says that in the regulation. So I have that. I would be glad to submit it, but I have \$45,000, and it depends on

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which way you look at the regulation. It could either be -- the way I terwilliger parkway red it, they

Wanted to know what's the \$45,000 in 2006 dollars, so we have that, but we also have it right to today loition what is the 2006 figure?

**Boyl:** \$53,062 with the cost of the appraisal.

**Leonard:** I'm curious what that represents. Is that what the actual value of your property was -- would have been?

**Dearth:** It's very confusing.

**Leonard:** What cso that number represent?

**Dearth:** It represents the differential.

**Leonard:** Maybe chris can help.

**Dearth:** I think I can state it.

**Leonard:** I just wonder what the \$45,000 --

**Dearth:** That represents the loss that he sustained as a result of the change in the regulation. He has brought the 2003 dollar value up to 2008 dollars. And to my untrained eye, that looks correct.

**Leonard:** What's the number we should be look at?

**Dearth:** According to his calculations, it's \$56,000 200.

**Leonard:** That's the loss that you experienced. So what's the appraisal of the house?

**Boyl:** We were not in the measure it doesn't require you to tell what is the current appraised value of the house and land. It only wants you to -- wants to know the appraised value of the house and land one year before the change in the zoning, and one year after the change in zoning.

**Leonard:** So what's that difference?

**Boyl:** Tbrif,000.

**Leonard:** So according to his appraisal, it meets the criteria but for coming in late.

**Dearth:** It does. And I realize this is all nit-picky and details.

**Leonard:** I have no quarrel with that. I'm just trying to understand.

**Dearth:** The one place where it is silent really is what would be the increase in value of his property today if you were to grant him the ability to seek an adjustment that he gained through his measure 37 claim?

**Fish:** Isn't that the only relief we can give him?

**Dearth:** Correct, it is.

**Fish:** The only relief we can give him is the right to seek an adjustment. And that adjustment may result in a bigger windfall than just the 53,000.

**Dearth:** That's right. There is nothing that prevents from you doing that.

**Leonard:** It just gets me back to my original point. The statute doesn't prohibit from us making a decision if all the elements you described aren't in by a prescribed date, it just said you have to make a decision based on what you have. I think -- i'm prepared to do that.

**Fish:** How many claims fall into this category where someone has missed the 90-day deadline?

**Dearth:** Most -- let's say about half of the remaining ones do, and i'm going to be going through those today, and I have not been contacted by any of those other claimants. So, yes, several other claims will be rejected for this same reason. And other reasons too. Not just this, but other things as well.

**Fish:** And is there a way in the notice that -- we're not going to give a similar notice again in the future, right?

**Dearth:** No. We hope not.

**Fish:** We can't go back and say we could have put it in bigger font, and if --

**Dearth:** I made it as clear as I could. Perhaps I could have done a better job.

**Fish:** If we were to make -- grant relief in this case, potentially how many claims would be affected that would otherwise be barred by the 90-day rule?

**Dearth:** Two or three that did not submit similar --

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**Adams:** That's the only deficit in those claims?

**Dearth:** Yes.

**Beaumont:** I think we have some claims for which we have not received no appraisal. This is a claim where we have received an appraisal way later than it was due.

**Fish:** There might be as many as two or three or four where all the other conditions are met, the person has a meritorious claim --

**Dearth:** But they did not submit anything even now. They have not even attempted to give us any information. It's not that it's late -- .

**Fish:** You have to --

**Dearth:** This is the only one where it has been submitted late.

**Fish:** We're not setting something precedent that has substantial impact, we're talking about a small number --

**Dearth:** Correct.

**Fish:** And we have -- council has said we have the right to extend -- there's nothing in the statute which prohibits us from extending the 90-day clause.

**Adams:** I think her exact words were she wouldn't stop us. Do you have any final comments you'd like to provide?

**Jane-Justina Boyl:** I would like to just say something.

**Leonard:** Understanding you're ahead right now. [laughter] so proceed at your own risk.

**Jane-Justina Boyl:** Ok. I'm only proceeding just to show my ignorance. I did open this letter on March 5th, and I gave it over to Bob because it was too technical. And he's decided tonight one in our family to handle this. When we talked about it then, we thought that we were covered because it talks about just compensation, and we felt that we weren't asking for compensation on our Measure 37 claim. We were only wanting to have the right to appeal. And so we felt like this wasn't really talking to us, it was just like a form letter. And it has other things that didn't really relate to us. Like they didn't want us to -- my eyes are -- keep drawn to this section, and it says we can't use the property for the purpose of selling pornography or performing nude dancing. So we didn't intend to do that.

**Adams:** Thank you.

**Leonard:** That's a relief.

**Adams:** Thank you very much. You're welcome to return to your seats. Any motions that council --

**Fish:** May I propose a framework? There seems to be two issues. One is extending the deadline in which to submit the appraisal.

**Leonard:** I wonder if you'd rely on me to make a motion to cut to the chase. I would move we approve the claimant's claim under Measure 49.

**Fish:** Let me frame the other part that I have a concern about. We could do that, but we haven't -- we have not gone through our process of evaluating the appraisal. And doing a verification. So would you consent to a two-step, where we extend the deadline, so we can get a timely file, but give Measure 49 coordinator a chance to review the appraisal -- the completed file and report to us so we, then take action? I'm a little concerned that an appraiser will come in at the 11th hour --

**Leonard:** I guess what I'm saying is, my motion is presumably -- based on information that was submitted as of the deadline, and I'm not even taking anything into account appraisals. So -- .

**Fish:** I guess what the risk that you're running is that --

**Dearth:** The risk you're running is our appraiser comes back and says it's deficient for any number of reasons. I have no reason to believe it is, but that's the risk you're running.

**Leonard:** We don't need to do that. I think we can approve the claim given the information we have without technically considering the appraisal. I know this may confound your lawyerly mind.

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**Fish:** I'm a recovering lawyer. Given the amount of money at issue and the fact the recourse -- the relief is to file an adjustment request, and it's not linked to the dollar amount, I would be comfortable in this case, but if this comes up again, there may be a circumstance where a completed application reviewed by our coordinator would be a precondition for me going to the next level.

**Leonard:** We're not actually obligated to do that by -- because of the way i'm approaching this.

**Adams:** Second.

**Beaumont:** Could I suggest an alternative?

**Leonard:** Yes.

**Beaumont:** Essentially what your motion proposes is that you approve the claim, disregarding the appraisal.

**Leonard:** Right.

**Beaumont:** It's going to be difficult in the claims to follow where we have no appraisal to distinguish why you're approving this claim, and potentially denying others. I think the alternative you may want to consider is simply to accept mr. Boyl's testimony and appraisal as is and decide to base your relief on a file with an appraisal.

**Leonard:** I like that. That's good. How would I frame that motion?

**Beaumont:** I think it's the same motion, it's the motion -- it would be a motion to approve the claim under measure 49 based on the measure 37 claim file and the appraisal submitted by mr. Boyl.

**Leonard:** So moved.

**Adams:** Second. Council discussion? I do have to ask if there's any other testimony? Is there any other testimony on this issue? All right. Call the roll, please.

**Beaumont:** I don't think you're required to take additional testimony. You may if you wish.

**Moore-Love:** I had someone signed up for the boyl claim, a myron smith.

**Adams:** Please come up before we take our vote. State your name and you have three minutes.

**Myron Smith:** Myron smith, i'm a neighbor of the boyls. I know a lot more now than when I entered the room. So maybe I better not say too much. Most of my comments were based on the concern with the benefits of another residence there occupying what is now, because of the way the house is situated, have you a back yard which is not really accessible, it's 45 feet or so below the entrance to the house on the upper end, and instead of having a back yard you have a vacant lot. And I think it would benefit the neighborhood to have a residence there, plus it benefits the city for, what, \$6,000 in taxes additional revenue. And that was my original -- those are my original comments. But listening to this, the \$45,000 versus the windfall, sometimes somebody out of the loop can see things better, maybe, but it seems to me that no one has considered the appraisal took into account the one house on the property rather than two. Does that make sense?

**Adams:** I hear what you're saying.

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

**Adams:** Thank you very much. If there's no one here to testify, please call the roll.

**Fish:** I'm going to support the amendment on the grounds that -- on the resolution on the basis that I believe the claimant had good cause to submit a timely appraisal, and based on the presentation of the -- of chris I believe we have a sufficient record to rule on it. Aye.

**Leonard:** Aye.

**Adams:** Aye. [gavel pounded] claim is approved.

**Item 1186.**

**Adams:** Which one do you want to go to next, chris?

\*\*\*\*\*: Byers, please.

**Dearth:** This is a claim brought by debra byers. The council heard 90 april of 2007. It's located in the ash creek neighborhood of southwest Portland. Here's an aerial photo of her property, two structures on the property. It's on southwest garden home. To summarize the measure 37 claim, it's brought by debra byers, it was brought by her, it's located at these address o.s.u. Garden home road.

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The regulations challenged were a change in the comprehensive Plan map designation from r7 to r10 as a result of the southwest community plan. You can see these maps, when she purchased the property in '89, the comp plan designation was r7. It was changed to r10 to match the zoning. She challenged that saying that the change in the comp plan designation to a lower density deprived her of value of her property, potential value if she were wanting to develop additional houses on her property. Council agreed and granted her claim at the time. But since then she did not undertake any additional actions, she didn't move to seek any additional structures or subdivide her property. Again, in our measure 49 analysis the same criteria applied. I won't go through them again unless you have questions. She -- her claim met all of these, but except for she did not submit an appraisal. To let you know, she called me after she received her letter, I explained what the requirements were in the situation, and she told me at that time she was choosing not to undertake an appraisal, and I haven't heard from her since. So her measure 49 claim is deficient for similar reasons. She did not submit an appraisal.

**Adams:** Is she here?

**Dearth:** I don't believe so.

**Adams:** Would she have received notice?

**Dearth:** She received the same letter, and when she received the letter she called me immediately. We talked about it at length. I told her what was required, and she told me at that time that she was choosing -- I believe because appraisals are expensive, she said she didn't want to undertake that. That's her choice.

**Dearth:** So therefore my recommendation to you is to deny the byers measure 49 claim. And what would happen is her comp plan designation would go back to the r10 it was before her measure 37 claim.

**Adams:** Any questions from council for Chris? Is anyone signed up to testify?

**Moore:** No one signed up saying there anyone in the room that would like to testify on this? Can council discussion or motion make something.

**Leonard:** Move to adopt the staff recommendation.

**Fish:** Second.

**Adams:** It's been moved and seconded to adopt the recommendation, to deny the claim. Please call the roll.

**Fish:** Aye. **Leonard:** Aye. **Adams:** Aye. [gavel pounded] claim is denied. That moves us to --  
\*\*\*\*\*: Mr. Grudzinski's claim.

**Adams:** Which is item 1189.

**Item 1189.**

**Dearth:** You first heard this claim in November of 2005. My name is Chris Dearth, measure 49 program manager. The claimant is Dean Grudzinski, and he is here today. The location of his claim is 11700 Southwest 35th Avenue. The regulations challenged in his original claim were the environmental zone on his property and again, similarly, a Change in the comp plan designation from r10 to r20 as a result of the southwest community plan. The property is located in the Arnold Creek neighborhood in Southwest Portland. The council order at the time, your decision on measure 37 on two claims. He essentially had two separate claims. On the environmental zone claim, you decided to deny the claim because the environmental regulation subject to measure 37 does not restrict the use or reduce the value of the property, and you found that many of those environmental regulations were exempt for public health and safety reasons. The second claim had to do with the change in the comprehensive plan designation -- similar to the previous claim. Again, our measure 49 analysis goes through the same criteria but in this case the Grudzinski claim does not meet one which requires one or more land use regulations prohibit establishing single family dwellings, in this case he can establish single family dwellings on his property. And secondly, similarly, he chose not to submit real estate evaluation as required under the measure. Under this

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criteria he is not eligible for measure 49 relief. Under section.95. But there is a second avenue for relief which i'll describe to you for under common law invested rights. So the measure allows claimants if they have established a Common lou vested right, and i'll go through the criteria, to retain their claim under these. So the first of the criteria that the measure provides is that the amount of money spent on developing the use in relation to the total cost of establishing the use, and in this case he has spent 100% of the money required to change his zoning that he was allowed to do after his comp plan designation was changed. So he qualifies under this criterion. The secondly, we have to take into consideration the good faith of the property owner in undertaking the process and from everything that I can see, he did do that because he undertook what he said he was going to undertake shortly after you grand him his measure 37 claim. Third, did the property owner have notice of the proposed change in the law before the beginning the development? But in fact, mr. Grudzinski undertook his changes before the legislature even started to discuss the referral that ended up on the ballot as measure 39. So he did not in fact have the notice and he qualifies under this criterion as well. We need to consider whether any improvements could be used for any other allowed uses, and his zone change in fact is simply a zone change. It's what he said his intended use was. And lastly whether the property owner acts are more than we are contemplated use or preparation. He proceeded deliberately with the changes in zoning that he told us he wanted to undertake, And it was not mere preparation. So in my opinion he -- mr. Grudzinski qualifies for a common law vested right under measure 49, under section 9, sub 3 of measure 49, and I would recommend that you grant him a common law vested right to his measure 37 claimant.

**Adams:** Questions for chris from the city council?

**Fish:** I have to compliment you for taking a mind numbingly complicated expheart translating it into a way that even I can understand it.

**Dearth:** Well, it has numbed my mind for weeks and months.

**Adams:** Is the claimant present, or a representative that would seek to speak to the council? Please come forward. Come forward or forever hold your peace. Good afternoon, welcome to city council. Please excavate your name. You have up to five minutes.

**Dean Grudzinski:** My name is dean grudzinski. And I have nothing to say. You just asked if I was present, and I am.

**Adams:** Great. Thank you.

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

**Adams:** Is anyone else signed up to testify?

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

**Adams:** Does anyone else wish to testify? We'll entertain motions from the city council.

**Leonard:** Move to accept staff recommendation.

**Adams:** Is there a second?

**Fish:** Second.

**Adams:** Moved and seconded to accept the staff's recommendation. Any discussion? Please call the roll.

**Fish:** Aye. **Leonard:** Aye. **Adams:** Aye. [gavel pounded] claim approved. That gets us to 1190.  
**Item 1190.**

**Dearth:** This measure was originally brought to you in april of 2007. You grand the lahti and sons claim. It's located in the south tabor neighborhood at the junction of -- it's on southeast powell at southeast 57th. You can see the aerial there. To sum rise the claim, it's brought by lahti and sons, a small company. It's located at 5705 southeast powell. The regulations challenged by lahti and sons was a zone change. Their zoning was changed from a commercial zone when they purchased the property to an r1a residential zone property. The zoning at the time of purchase in 1988 was c2, which is comparable to a cg zone now, and the current zoning at the time of the measure 37 claim was r1a residential zone. So they could continue their current commercial use, but if they sold the

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property or if they dsht use lapsed, they would lose the use. The council order at the time was to grant the claimant's claim for a waiver of the regulations and to waive the zoning back to a general commercial zone c.g. and they had time since then to undertake any kind of zone change and commercial use on the property, but to my knowledge They have not done so. We've had a number of conversations with them since then, but I have not heard from them in a number of months or since my measure 49 letter went out. So again, with look at the criteria for measure 49, same ones. They do not qualify under d, e, and f. Indeed -- measure 49 is written for single family residences. This was a commercial property, so commercial and industrial and billboard claims are no longer allowed. So this kind of claim would not be allowed under measure 49, and it doesn't qualify under these three criteria here. Again, they did not submit an appraisal similar to previous ones. So my conclusion is that lahti and sons is not eligible for measure 49 relief. And I would recommend that you deny the claim.

**Adams:** Is the claimant or representative here that wishes to testify? Is there anyone in the room that would seek to testify on this matter? Did anyone sign up?

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

**Adams:** Ailing seeing no one come forward, I guess we'll entertain motion ors conversation from the city council on this item.

**Fish:** Move to accept staff recommendations.

**Leonard:** Second.

**Adams:** It's been moved and seconded to accept staff recommendations. Please call the roll.

**Fish:** Aye. **Leonard:** Aye. **Adams:** Aye. [gavel pounded]

**Adams:** Staff recommendation proved. That gets us to backtracking to 1188.

**Item 1188.**

**Dearth:** I have had a number of conversation was the calcagnos and their representative over the last week or two. They I think understand and dry with my recommendation to unfortunately deny their claim, but they wanted to be present to give an explanation, and they were not able to be here, so we have postponed this until september 11th. So with your permission I would ask that you put this over to the next date.

**Adams:** Unless there are objections, this item is --

**Beaumont:** No objections. I would just announce the date and time of the postponed hearing.

**Moore-Love:** That is september 11th at 2:00 p.m. Time certain.

**Adams:** This item is continued until the time mentioned by Karla.

**Fish:** Thanks for doing a great job.

**Adams:** Good work.

**Adams:** I think that gets us to the time certain of 3:00. Which ever we're just six minutes behind.

**Item 1191.**

**Adams:** Good afternoon. Who is going to begin?

**Beaumont:** Commissioner Adams, I need to do the opening announcements.

**Adams:** Ok. Kathryn will begin.

**Beaumont:** Before we begin the hearing today, I am required to make several announcements concerning the type of hearing, the order of testimony, and guidelines for presenting testimony. This is an on the record hearing. This means you must limit testimony to material and issues in the record. This hearing is designed to only decide if the landmarks commission made the correct decision based on the evidence that was presented to it fu. Start to talk about new issues or try to present new evidence, you may be interrupted and reminded that you must limit your testimony to the record. We'll begin with the staff report by the bureau of development services staff for approximately 10 minutes. The council will hear from interested persons in the following order. The appellant who is the applicant in this case will go first and will have 10 minutes to present the appellant's case. Following the appellant persons who support the appeal will go next. Each person

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will have three minutes. If there is any principle opponent, that principle opponent will have 15 minutes to speak to the council and after the principle opponent the council will hear from any persons who oppose the appeal, and each person will have three minutes. Finally the appellant will have five minutes to rebut any presentation by opponents of the appeal. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, the council will set a future date, and a final vote on the appeal and if a final vote is taken today that will conclude the matter before the council. Finally just a few brief guideline force those who will be addressing city council today. This is an on the record hearing. This means you must limit your remarks to arguments based on the record compiled by the landmarks commission. You may refer to evidence that was previously submitted to the commission you may not submit new evidence. If your argument includes new arguments or issues it will be rejected in the city council's final decision. If you believe a person who addressed city council presented an argument that relies on evidence not in the record, you may object to that argument. Finally under state law only issues that were raised before the landmarks commission may be raised in this appeal to city council. If you believe someone has raised issues today that weren't raised before the commission, you may object to the council's consideration of that issue. That concludes what I have to say.

**Adams:** Thank you. I do have to ask for ex parte --

**Beaumont:** Yes.

**Adams:** Do any -- does any member of council seek to declare any ex parte contacts or any conflicts that would present them from acting on judging this matter? Hearing none, are we ready to proceed? Jeff, are you going to start?

**Jeff Joslin, Bureau of Planning:** Bureau of development services, dave -- .

**Dave Skilton, Bureau of Development Services:** I have a power point presentation for you. This is an aerial photograph showing the site of the Cornelius hotel, the subject of the appeal. It's at the corner of southwest alder and park streets. This is photographs of the building as it looked in 1908 when it was completed, and today, shown with the red arrow. The zoning for the property is c.x.d., which is central commercial with design overlay. This is the most intensive commercial zone in the city. The approval criteria which the landmarks commission used are listed here. The key one in this case are chapter 33.846060g. This is a summary of the proposal as approved by the landmarks commission with the exception of the item in red at the end. Window replacement on the upper six floors, floors 2-7. The applicant's proposal found that 18% of the windows, the historic wooden windows were deteriorated beyond repair. 63% of the windows were in need of significant repair, and they couldn't find a vendor that would guarantee operable wood replacement window for the large windows on the south elevation of the property. A magnum window is one that has a sash-to-dimension greater than 16. So the applicant's proposal for the windows was to replace 100% Of the windows on floors 2-7 with a closely matching aluminum window system. The decision was to approve but with two conditions. The conditions were that the historic windows on 2-7, that the applicant's own assessment report found to be deteriorated beyond repair could be replaced in kind, and that all other historic wooden windows on floors 2-7 must be retained and repaired. The crux of the issue is approval criteria, 33.846.060g4. Historic features generally historic deteriorated historic features will be repaired rather than replaced. Deterioration requires replacement, the new feature will match the old in design, color, texture and other visual qualities and where practical, in materials. The historic landmarks commission's finding was that the severity of deterioration did not require replacement of all the windows. And so it allowed in kind replacement where the applicant's study determined the windows can be deteriorated beyond repair. City council options are to deny the appeal and uphold the historic landmark's commission, sustain the appeal by modifying the historic landmarks commission decision as requested by the applicant. Or to overturn the decision. That's the end of my presentation.

**Adams:** Questions from the council for staff?

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**Leonard:** Just so I understand, the code -- can you go back to the part that describes design, color, texture, and other visual qualities?

**Skilton:** You want the approval criteria?

**Leonard:** I was writing it down and I think -- . [quoting] if that answers my question, the last part, it doesn't have to be replaced with exactly the same things but just something that matches it in design, color, texture and other --

**Skilton:** Correct.

**Fish:** The owners of the property on the historic register receive property tax freezes and also are eligible for lower interest loans to help cover the cost of maintaining and renovate is that correct?

**Skilton:** I'm not -- they're not automatically enrolled in the tax incentives. They have to apply for them.

**Fish:** They're eligible for --

**Skilton:** They're eligible, and I believe this property participates in several.

**Fish:** Thank you.

**Joslin:** I do have additional testimony.

**Adams:** What's your name?

**Joslin:** I'm simply going to read a letter i've already provided to you written by the chair of the landmarks commission, which could be loosely paraphrased why windows matter. So i'll just proceed forward. City councilmen, on behalf of the Portland landmark commission, i'd like to explain the reasons our decision to prohibit the removal of the original historic windows and replacement with aluminum replicas on the cornelius hotel. One conformance with criteria. Our review criteria clearly calls for retention of historic -- of original historic fabric. Character defining fabric that is intact and reparable must be repaired rather than demolished and replaced. This is one of the most basic tenants of historic preservation and historic design review. 80% of the exterior original windows of the cornelius are repairable. That good fortune makes it imperative they be retain and refurbished. Two, primacy of windows, exterior windows are one of the most significant element of historic fabric. Portland has a long standing history of protecting original windows. This has been our precedent, evident that this issue has surfaced countless times before now includes the nines hotel, formerly know as meier & frank, hotel vintage plaza and Multnomah hotel, all of which preserved and refurbished the original windows and added interior storm windows. Even the city of Portland has seen fit to respect this standard. The renovation of city hall included retention and repair of the original windows on the north side. Windows on the other side were irreparable and therefore replaced with duplicates to match the refurbished originals. And about 120 original windows on p.d.c.'s headquarters were repaired and reinstalled as part of its renovation. Resistance by some developers and/or architects to the above tenants is not uncommon. Common reasons include one, replacement is more sustainable. Actually, there's substantial evidence that the energy savings of insulated windows is only marginally better than single paned windows. Additionally nothing is greener than reuse. Especially of renewable material that has nearly a century of embodied energy. Finally, repairs are typically performed by local artisans rather than out of town factories, also a green concept. Two, historic windows are not acoustically ideal. Interior storm windows resolve this matter as well as remediation for minor energy inefficiency while retaining original fabric and preserving historic facades. Three, repair is more expensive and time consuming than replacement. That's usually true but this is common in -- common in almost all aspects of historic renovation. Renovation is rarely if ever more cost effective than new construction. However, this fact is offset by subsidy programs put in place specifically to balance these cost premiums, including historic tax credits and special assessment, not to mention the general social and marketing benefit that goes with retention of a significant historic landmark. The recommendation of the historic landmarks commission is for this applicant to repair all the reparable windows which includes at a minimum the east facing windows and to add interior storm

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windows as so many of its historic lodging competitors have done. The windows on the south side can be either repaired if possible or replaced with wood replicas. They could be insulated if desired. Replacement was not likely be operable due to their size, but while that may a preference it could not be required by code. We strongly request the city council choose to uphold the decision of the landmarks commission in this matter. I fear to overturn would it undermine the standard that has been in place and observed for as long as I can remember. The case of the cornelius hotel is not exceptional. Finally an additional note, I would say someone outside the realm of the landmarks commission's specific findings, art demuro, as a private developer specializes who specializes in commercial historic renovations, I sympathize with the request of the applicant. The bottom line is that it's easier, cheaper and faster to replace the historic windows than to repair them. However that's not been the standard in this community, a standard that has served our historic preservation as to the ethic well and been commonly observed by others before. Finally, we wish to express our sincere gratitude to the applicants for their commitment to the renovation of this treasured landmark.

**Adams:** There are some that would sort of contemplate a disagreement over windows that in many cases will be high off the ground, a disagreement whether they be paintable aluminum or paintable wood and, say, this is just an overreach on the city's part and the information that you've given us speaks to some of that, but in your own words, if this is allowed, i'd like you to -- like to give you an opportunity to respond to substantively, not the fact this is the way we've always done it, but why is this important?

**Joslin:** I think the commissioner demuro has spoken to that somewhat. And it is a regular topic in both the preservation community, more broadly as well as locally, and among our staff as we grapple with this on projects of a variety of skills throughout the city. There are a couple of aspects. One is appearance, that's where some of your comments go to. The other is just the nature of historic integrity. And the value of that. Whether a replication is as good as the original, particular -- and particularly, more challengingly so, what is a replication? Is it a replication in appearance, or does it go beyond skin deep? And that's where it gets a little more delicate. In the case of a residential structure and one of our national register historic districts, ladd's addition or layer him, clearly in those -- lair hill, clearly in those cases the quality of some of these materials are fundamental and intrinsic to the historic quality. It's a little easier call in those cases. In this case i'll tell you that the replication in this material that they were able to come up with and present to us in mid process as a physical alternative, the sections through those materials are indecipherable. In other words, the shape of the window itself is absolutely -- as close as it could be without being of the wood material itself. I think it was clearly an oppressive genuine effort on their part to find a manufacturer that would do the best job achievable in that other alternative material and hopes that would convince landmarks commission, but again, in their estimation, like the finer scale example I used for buildings like this, they believe that replicating the original not just in appearance, but the material itself, matters, and is fundamental to the qualities that the historic designation is intended to preserve.

**Adams:** I guess another obvious question is, does our decision today either in legal terms or in practical terms change a precedent, set precedence, or create uncertainty for the future?

**Joslin:** Well, it would frankly depend on whether the landmarks commission wishes to take this as a specific message about these kinds of requests in general and apply it in the future or not.

**Adams:** From a legal point of view?

**Beaumont:** Your decision today is based on the facts presented to you in this case. So your decision today could be -- is technically fact specific. That won't prevent someone in the future from -- who is aware of whatever your ruling might be if you were to disagree with the landmarks commission from arcing with that as precedent to the commission, but technically each land use case is decided on its own facts, and whether those show the criteria are satisfied.

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**Fish:** I am no longer a practicing lawyer and I surrendered my license --

**Adams:** Really? You did, really?

**Fish:** By code -- no, I put it on suspension. But if I were a lawyer in the future, I would take the historic feature section of the code which refers to generally, blah, blah, blah, and later on where practicable. And since those are words that are intended to be interpreted, I take each of these decisions for a guide post as to where are the exception force generally, or under what circumstance you'd say it's not practicable.

**Leonard:** I guess I have to ask from a lay point of view, i'm assuming the appellant, and I want to hear what they're going to say, but I would imagine they'll say the reason we're willing to go to the expense and effort of designing a product that replicates the wood that is not wood is because of some intrinsic quality in the reproduced product that the wood product does not have. And assuming that's the case, And assuming that I have no reason to doubt what you're saying is accurate, for at intent and purposes standing back and looking at it it looks like the same thing, why wouldn't -- take another prove, it almost sounds like we're enforcing a rule for the rules sake by not allowing them to do something that appears to be just as good but arguably gives them some intrinsic value that wood product doesn't. Why wouldn't -- with all due respect to art's letter, he had to do it, other people had to do it so they would have to. It seemed tonight message. Why wouldn't we allow somebody to have a higher quality product that mirrored in every tangible way what the original product possessed, but still gave them this -- whatever that intrinsic value is, that replicated product was?

**Skilton:** I think that the landmarks commission was looking very narrowly at the regulation --

**Adams:** I apologize, i'm supposed to make you say your name again.

**Skilton:** Dave skillen, bureau of development services. I think the landmark commission is looking at the regulation rather narrowly and found that the windows were rep ran. In other words, the -- whether or not you can replace the windows is hinged on the fact whether or not they can be repaired, and their determination was the windows could be repaired. And where the windows had been found to be I reputable -- I reputable, they allowed the windows to be replaced in kind. I think that's --

**Leonard:** I'm assuming when you characterize that decision as them looking at it rather narrowly, that were they to look at it a different way that is broader, they would have the lieutenant attitude to potentially allow the other material to be used as long as it rip he indicated --

**Skilton:** I think the regulation allows that, yes.

**Leonard:** Thank you.

**Adams:** We probably should hear from the appellant, but any final questions for staff?

**Fish:** I may have a question on the back end.

**Adams:** Representatives for the appellant, please come forward. Welcome to city council. Please state your name, who you're representing. If you're representing -- if you're lobbying on someone's behalf, and how much time do they have?

\*\*\*\*\*: 10 minutes.

**Adams:** Have you 10 minutes.

**Lamont Smith:** Lamont d. Smith, t.m.t. Development. I'd like to begin mayor-elect Adams, commissioner Leonard and commissioner Fish by thanking you for an opportunity to present our project. And i'd like to especially thank at this time the landmarks commission and its staff along with the Portland development commission and the state historic preservation office and many others who have assisted us over the last several years in trying to bring back this property, this renovation.

**Adams:** If it's ok with council, since only three of us, And I need to take a quick break for human reasons, why don't we take a five-minute quick break.

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

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**Adams:** We stand in recess for five minutes.

At 3:27 p.m., Council recessed.

At 3:36 p.m., Council reconvened.

**Smith:** Lamont smith, vice president of t.m.t. Development. Located at southwest park and Alder, owned by t.m.t. Development and is a registered historic building that sits vacant and mostly condemned. In the heart of Portland's new park avenue vision district and as you can appreciate, not only the site size is challenging, but also the historic designation, there are many constraints in terms of what we can do with the building. T.m.t. Development, after studying several scenarios and business models, is prepared to make an estimated \$10 million renovation of this 100-year old building. The new hotel will be called the alder park hotel, feature 66 nicely appointed guest rooms and have new retail at the street level and two nicely appointed meeting rooms. In the entitlement process we have been pleased to receive either positive recommendations or approvals from -- we received approval from the state historic preservation office. We received a very positive recommendation for approval from the landmarks staff. We received approval from the national park service. Today we're appealing the landmarks commission decision that we must retain the 100 year old existing windows and i'd like to introduce mr. Heili of tva architecture to give you a summary of why this creates a real serious acoustical issue and economic hardship on such a project and I would say to commissioner Fish about any questions about tax intimates, there's historic property, they're eligible as far as low-interest loans, i'm not aware of -- the only thing we've worked with is p.d.c. On a seismic project and I guess that would be considered a low-interest loan.

**John Heili:** I'm with tva architects and would like to thank for your time to come and present this important issue to us. I'd like to begin by saying this project as it relates to the exterior of the building is primarily a historic preservation and renovation project. We're not coming forward proposing adding floor area or any significant remodel to the exterior of the building. Bless you. And as such, we've put together a team of experts and consultants in the area of historic preservation. Local architect peter meijer is on our team and was a member of the landmarks board. And we've consulted with the state historic preservation office and they've been integral in helping us navigate through the national parks service for buildings on the historic register and we're happy we have approval of the state and federal level for this project as proposed currently. We also worked diligently with manufactures and industry experts with regard to the fabric on the brick facades to get their opinions on how to proceed with the building. This is an image of what the building looks like today. And this is a rendering that our office has done of how we hope the building will look when we finish with the project. As you've heard, the issue before you today --

**Fish:** Interrupt for a second. It's not showing up on my screen.

**Adams:** Nor mine.

**\*\*\*\*\*:** That should do it, there. Is it showing up on your screen now? Are you getting any image at all?

**Adams:** No.

**\*\*\*\*\*:** Is the image appearing up here?

**\*\*\*\*\*:** It's distorted.

**\*\*\*\*\*:** Would it make sense for us to see it up here?

**\*\*\*\*\*:** It's not a good image up there. It's also distorted.

**Heili:** Get the lights. As I was saying, the issue as presented today has to do with the design guidelines, that states in general and where practical, the materials should be preserved. We have discovered we have a condition with the windows on the alder street facade, the 20 windows considered a magnum window because of their side where we have problems trying to meet the

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acoustic requirements for a business class hotel located in the business core, as well as the thermal requirements for the current code and with the intention of achieving a leed certificate under the rating system. As was explained and I apologize for the imagery, but these are images of the existing conditions of the window around the building. The survey was done by our historic consultant and he surveyed all of the windows on the park street facade. And included 14 of the windows up on the sheet metal on top of the building and we found on these two elevations, all of the windows on the mansard component will need to be replaced due to the deterioration located high on the building and in this sheet metal, weather damage over the years for lack of maintenance.

The 20 magnum windows on the alder street facade will need special attention and then additionally, the remaining Windows will require some level of restoration because of certain components that will need to be fully replaced. We're talking about basically 16 of the 84 windows that can be fully restored with the existing wood frames and glass components. So what we found, again, was that with these magnum windows, we began to look into ways that we might be able to restore the wood windows. With the magnums, you end up with a sash component with an insulated glazing unit that weighs over 60 pounds. So I know there were comments about whether or not the window could still be operable, but the upper sash would still weigh over 60-pounds and structurally, the wood frame could not support and this was taken in to industry experts, locals, as well as nationally, to give us feedback on how we might deal with the magnum windows in order to meet the thermal and acoustic performance that we need to. It was suggested we look at doing an interior storm window. Unfortunately, you can't see it in the slide here, but we did talk to a number of manufacturers for these interior storms. And we found that interior storm will end up being a bulky, costly component that would have to be broken into three pieces. One that allowed for the operability and one for the unit to be opened while one controlled the locking mechanism. This would have changed the historic appearance, you would have seen the large wood frame members behind the original wood members. So there were significant challenges we were faced with and all of these, again, in trying to deal with the acoustic performance. Finding there wasn't a wood product on the market. Whether it was one we could restore the windows with or one that could match, again, the profiles that would work for this project. That took us to the aluminum windows.

Where we found a manufacturer -- custom window who does this throughout the nation, working on historic projects. We've worked very closely to develop a profile that matches our profiles on the hotel, even down to this ornate horn element and would allow us to you the acoustic levels we need for this project and so it was our feeling this was the best solution to move forward for these windows that occur on the second level through the top of the building. It would be something from street level really isn't something you would even be noticeable, whether it was an aluminum product or wood. And would satisfy all of the means and requirements for this building. Provide us with a low-maintenance product. Something that's a sustainable solution and, again, as I said, respond to the acoustic and thermal performances required for restoring this unique building in the parks block area.

\*\*\*\*\*: Thank you, john.

**Adams:** We have a question. Thank you. Can you just summarize for me the number and location of the windows that you want to refurbish, the wood windows you want to keep and refurbish versus the windows you want to replace with the new materials.

**Heili:** We're proposing the replacement of all the windows so that we have a consistent look across the entire building. If we end up replacing just some with the aluminum products, in order to meet the thermal and acoustic requirements we would still have to go behind the historic windows with the bulky storm window.

**Adams:** I'm going to let you finish.

**Adams:** Why don't you go ahead and finish.

\*\*\*\*\*: I wasn't going to say -- that was it.

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**Adams:** What would you say to the previous builders who sought to you know, not have to refurbish existing windows that the city is referenced by mr. Demurrow and staff report. Why would we say yes to you when we said no to previous -- or previous councils have said no to previous requests?

**Heili:** I think the point was made earlier that this really needs to be looked at on a case-by-case basis and we have the oversized windows and if those were not an issue, likely we could go out and find wood windows and replace and restore the wooden windows. The other issue is the use of the building as a hotel in the central business core. There are certain acoustical requirements needed to be met in order to perform -- these are going to be business-classrooms so I know some of the projects that were referenced in that letter, they may not have been, you know, to this use or may not have been to this level of a type of a hotel.

**Adams:** Say, going for -- what? -- five star?

**\*\*\*\*\*:** Pardon me.

**Adams:** Say the developer of the --

**Smith:** The nines.

**Adams:** -- is going for five stars, so I assume that's an analogous -- I don't know if there's magnum size windows, i'm not sure what size.

**Adams:** And I know the fifth avenue suites now called something else and the monaco have also dealt with this issue. Are you familiar with them?

**Heili:** I'm familiar with the project, i'm not familiar with whether or not they had switched their windows out to aluminum or --

**Smith:** I have consulted with hoffman construction specifically on the nines and those windows were not -- very few were even close to the deterioration we're looking at here. And I would like to point out from a hotel standpoint, again, the acoustics are so important to be able to deliver a quiet night's stay and they start on the eighth or ninth level above the traffic and all that goes on and that's our -- one of our primary concerns is being able to meet the guests' expectation in an urban hotel.

**Adams:** Other questions from council?

**Leonard:** The windows you propose installing to replace the wood offer some sound reduction that the wood windows cannot?

**Heili:** Absolutely. They're outfitted with a double paned insulated glazing unit so they have a half inch -- not half. Overall half inch air space between two quarter-inch panes of glass and the difference in s.t.c., which is the sound transition coefficient, the information we get is that for the old wood windows, you're looking at a rating of probably around 21 to 25, and for the new, we're have a rating of in the neighborhood of 33 to 35.

**Leonard:** What does that mean -- explain what that means in terms of blocking sound.

**Heili:** Basically means the difference of being able to hear the street traffic, the street noise at a very audible level as opposed to hearing it at a much more muffled level.

**Leonard:** And the windows you propose installing, it sounds like from staff's description, are by all observation the same as the wood windows?

**Smith:** Yes.

**Leonard:** Do they also have higher energy rating? Do they offer some energy efficiency that the wood were not?

**Heili:** Correct. They're a aluminum sash window which means that there's no connection between the interior frame and the exterior frame for the heat transmission and then on top of that, you've got the double pane, with the air space in between which provides thermal insulation.

**Leonard:** Can you give an idea of what that means in terms of energy reduction comparison?

**Heili:** The best way to quantify it as I said we're going after the leed, silver rating on this building and as such, the windows are contribution to us saving -- trying to get to a point where we're saving

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upwards of 20% of the energy over a base building that would have just similar wooden windows with single pane.

**Leonard:** 20% saving in the energy use compared to the building without any upgraded insulation features? , correct.

**Leonard:** Of that 20% increase in efficiency, how much do you attribute to the windows?

**Heili:** It's hard to say because they calculate it as an overall wall system. A major component of our exterior wall system are these windows so if we were to take a ratio, probably 60% of it is the windows themselves.

**Leonard:** I guess this is a question for staff. Do historic guidelines at all take into account energy issues? Issues in terms of energy consumption?

\*\*\*\*\*: [inaudible]

**Leonard:** Yeah.

**Skilton:** Dave, they don't. They don't take energy into account.

**Leonard:** So there's some conflict, maybe, with some of what we try to achieve in historic restoration and other broader energy saving goals?

**Skilton:** Yes, i'd say there's conflicting values here.

**Fish:** Let me express one of the challenges i'm having. We're talking a lot about acoustics and acoustic dampening and energy efficiency. As commissioner Leonard said, in the context of restoring a building on the historic register, so we've made a commitment, the owner, to operate within a set of guidelines that put a premium on maintaining historic features and characteristics of the building. I would expect with the advance of technology someone could make a compelling argument that there could be sound and energy enhancements of shifting from some historic material to some other material. Today it's wood to aluminum. Tomorrow it could be aluminum to something else. I appreciate their investment in restoring this building, but I need help in drawing that line. You're talking about sort of enhancements in acoustics and in energy in the context of a code which puts a premium on restoring the historic integrity of a building.

**Heili:** I guess I would offer as we stated, we've worked closely with the state historic preservation office and the national parks service that regulates restoration of the buildings on the historic register and to date, we have approvals from both those agencies to move forward.

**Leonard:** Based on these windows?

**Heili:** Correct.

**Leonard:** That you're proposing?

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

**Smith:** I believe I would say we have acted responsibly in trying to meet the historic guidelines and build this building back to life. It is vacant and condemned. These windows, the replicated windows, we've worked so hard to match those profiles that it's -- I think it is a responsible action.

**Adams:** I want to be clear. I think it's --

**Fish:** I think it's more than responsible. I'm trying to reconcile the point my colleague has said between one set of code requirements and another and how we reconcile them and i'm not at all [inaudible].

**Leonard:** I don't know if this is the appropriate time, but it's the topical time to address that from my perspective. I would not agree, for example, to a replacement window in this case that met all of the most modern technical advances we have in energy consumption and the various things that windows may accomplish for us in terms of energy savings if they did not have the appearance and texture and replicated precisely what it was that attributed to historic quality of the feature we were debating. In my view, this isn't an either/or choice. It has to be one where a choice complements the other. If we can achieve both goals at once, I don't see as one precluding the other by having to decide whether or not we accept the more advanced features, as long as they have the intrinsic qualities that the historic window had that it's replacing.

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**Adams:** I wanted to ask the comparative question to see if staff had an answer. In terms of the monaco, the nines, are they considered magnum windows and --

**Smith:** I'm sorry, commissioner, I don't have that information. I don't know about the monaco -- the monaco. I didn't hear anything on a magnum for the nines. But fairly same time period, so it's possible. They painted them shut. They're not operable.

**Adams:** These are going to be operable?

**Smith:** Yes.

**Fish:** You talked about the exterior storm windows be aesthetically out of place. But is it the intention to have the operable so that they can be opened and closed by the resident or fixed in a closed position?

**Heili:** The intention is that they're operable and we're using that as our make-up air for the hvac for the building.

**Fish:** If I as guest can open and close the windows, why should I be concerned about the acoustic dampening?

**Heili:** Because it's your choice to open the window or close it and if you're comfortable with the vehicle noise or the trash trucks in the morning, that's your choice.

**Leonard:** And the various things that one might smell in downtown Portland.

**Adams:** What would you do if this was granted and you replace the windows? What would you do with the old windows?

**Heili:** As a leed project, probably recycled in some way.

**Adams:** Giving them to an organization that could put them in another project?

**Heili:** Could be. The rebuilding center.

**Fish:** And conversely, if we were to deny the appeal, is this a deal killer in terms of going forward with the project?

**Smith:** It is.

**Fish:** Why is it a deal killer?

**Smith:** I can't -- the risk putting this kind of money at risk when we can't deliver a fundamental expectation of an overnight guest for a quiet night's stay is too risky.

**Adams:** So it's not a difference in price, it's a difference in end product?

**Smith:** Correct.

**Adams:** What is the difference in price?

**Heili:** The wood window and the aluminum are equal. The cost of the interior storms is a third as much of the overall cost.

**Adams:** And does that include the old windows being dis -- disassembled? Future projects, other projects?

**Heili:** Yes.

**Adams:** Or trashing them.

**Heili:** No, that would be factored into a different part of the project in terms of the demolition and recycling. So this is apples for apple, versus buying new aluminum windows.

**Adams:** There's no one in the room that has any historic comparison on this to these other projects downtown? Jeff, you do?

**Joslin:** I believe in scale, they are compare rabble, but the projects aren't. While the other cases, the windows were restored, but did not experience the same level of deterioration that required replication and replacement. And that's where the magnum issue comes in. Whether or not you can find a manufacturer that will provide a replicated wood sash of that scale operable that can meet the structural characteristics required for such windows.

**Adams:** And you've seen a mockup or sample of what they're proposing?

**Joslin:** No, simply the drawings that have been provided. We may have had a section --

\*\*\*\*\*: The landmarks commission meeting we had a replica.

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**Heili:** We do not have the exact replica of what's proposed because these are custom extrusions from the manufacturer and until a bid is let on a contract -- we provided a sample of similar windows that they've built in the past. I do not have that here, though.

**Fish:** What kind of assurance, if we were to --

**Adams:** If we were to proceed with allowing you to put the new windows in, what assurance do we have through the process that the windows will meet somebody's expectation for quality?

**Joslin:** Well, the drawings that were provided to us and requested initially for approval are highly detailed and would be sufficient.

**Adams:** And that would come to the permitting process?

**Joslin:** Both through permitting and final inspection.

**Adams:** Ok.

**Smith:** Thank you for your consideration. We appreciate it.

**Adams:** Thank you for answering our questions. I just want to ask this again. Because I haven't dealt with this issue before. This exact kind of issue before. There is no legal or is or is there not, any legal precedence and I appreciate commissioner Fish's follow-up to that. And answer the question again.

**Beaumont:** I think he's given you a good lawyer's answer which is as a legal matter you're deciding this case on these facts that have been presented in determines whether the facts presented to you show that the approval criteria have been satisfied of as a practical matter, that will not stop anyone from the future-to-from arguing that cases like this or different in arguing that you ought to do the same or a different thing.

**Adams:** Does it provide presence dense or direction to the staff level decisions in matter like this?

**Beaumont:** Staff would give your decision whatever consideration they feel is appropriate in making recommendations to the landmarks commission in future cases.

**Joslin:** Jeff, from the development services. I guess I request that if you do go down that road, the more information you can provide to us about just what the specific considerations were, that led you to that place, the more we could understand this as a single case decision rather than a broader precedent.

**Adams:** Let's have discussion on council.

**Leonard:** To that end, in my view, I want to distinguish the characteristics of this particular application is the use for which it's being considered which according to the testimony would require that the sound in the room be less than what one would normally expect a commercial office setting or retail setting, so I think they articulated a specific request for a replacement window that I think might not necessarily apply to other similar projects. They are not for the same use. But having said that, and having worked in this field now for six years, it I think is important to at all times and one of the things we work hard with the staff of b.e.s. To do is to be as flexible and oriented to solutions as possible while certainly giving honor to the code, but to never try and enforce the code for the code's sake. And in what i'm hearing, frankly, from both sides today is that this might be an example of that. If we can have a product that replicates the appearance of the one that it's replacing, allows for a use that would otherwise apparently not happen if they can't get that particular product and take a building that could be contributing more to the city than it is now, I think that's good. If we're not violating any of our principles of historic preservation. It doesn't sound like from either side that we are. So i'm comfortable we're not setting a press -- comfortable we're not setting a precedent that might haunt us. And covering an area that we might want to look at more, and specifically, do we have opposing goals in some of our energy goals and historic preservation, and if so, is there some way we can adjust it to make it clearer in the future. But in this particular case, i'm comfortable bringing to the applicant's request and allowing the project to move forward based on what we've heard.

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**Adams:** Commissioner Fish, any thoughts. I'm struggling with this one. I understand the pragmatic approach. But the particular code language is pretty narrowly tailored in terms of the opt out. What i'm hearing we've got to balance a lot of concerns that the intended use of the building could dictate how we apply the code. That's one issue. That there could be a sufficient matchup that we're arguing six of one and half a dozen of another. At the same time, there's very specific directive in the code about repairing rather than -- about repairing, rather than replacing.

**Leonard:** Where practical.

**Fish:** Then it goes on where the severity of the deterioration requires replacement. Blah, blah, blah. That kicks in at the back end. I'd be interested in knowing where the mayor-elect is on this issue. It would help to clarify my thinking.

**Adams:** Well, I think that there are enough unique attributes about this application that I would feel comfortable with allowing for new windows to be installed. For me, it's important, though, from a total green perspective that the old windows be offered to local providers -- local agencies such as the rebuilding center. And that -- and I don't know -- and this is very important to me. But I don't know if it's legal. So it would have the answer -- the answer has weight on my position. Is that I want someone to be -- someone associated with this process to have some sort of sign-off on the final product and the installation just to make the connection that this is such a unique case. Sort of underscoring that. I also want to make it clear that if the majority on the council does approve this appeal, that it's not -- does not suggest any new precedence for staff level decisions or anyone contemplating doing renovations or buying buildings for renovations in the future. Because I will just as easily say no to something that I thought was not meritorious. For me, it's not the reason to approve your appeal. So that's where i'm at what about the legal? Can we stipulate certain things?

**Beaumont:** I think -- I think all -- just about all of what you've outlined can be included in any revised conditions, the one i'm not clear on is staff involvement in inspecting the replacement windows as they're installed.

**Adams:** Signing off on a prototype or -- because I don't know what the manufacturing process is exactly, but somebody signing off that's been associated with this part of the process so that I feel comfortable that my concerns about quality -- and I don't know you all. I know the company that you work for that is held in high regard, but I want to make sure that the manufacturer and the contractor on the site is -- that if we're going with replacement windows, lives up to my expectations of quality.

**Beaumont:** If I understood what the applicant said, parentally there were examples presented to the landmarks commission. Is staff able to verify that those are satisfactory?

**Adams:** Like to hear from one of you and you can come forward as well and speak to this issue. Since it's important.

**Fish:** Who you like to hear from first?

**Heili:** I'm john, tva architects. To reiterate the process as I understand it is as I said, these are custom because this -- they're matching this specifically. They generated the details that we showed and those match the profiles and the character of the unit. Until they have a contract in hand and some assurance that they're going to be paid to do this, they're not going to make an extrusion or anything because that is a big part of the cost of their process is to make those extrusions. We can solicit similar examples. We can provide the one we brought to the landmarks, but until the product is actually out at the job site, 84 windows, I think we'd be hard pressed to have a unit delivered for approval.

**Adams:** Thank you. Jeff?

**Joslin:** The drawings as I mentioned earlier, that have been provided, are highly detailed and --

**Adams:** Did you see the sample product?

**Joslin:** Well, it was more generic extrusion.

**Adams:** Have you seen the windows.

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**Joslin:** It wasn't a sample of the sash in the building and a comparable sash replication. Aluminum. We haven't seen one-for-one. But we do have drawings and they are quite detailed and there's no reason based on my experience to assume that we need anymore information that we've been provided in graphic form. Certainly with this direction, we'd be scrutinizing those windows on site to make sure they're as true a replication as been provided in the drawings.

**Adams:** Thank you.

**Leonard:** Complaints i've heard over the years of our inspectors one is that they're not detailed enough in their plans.

**Beaumont:** Could any approval --

**Joslin:** I think they already do. The finals already do.

**Adams:** Ok. As long as that's -- you're assuring me that that's iron clad and that the inspections will be with those drawings in hand and that those drawings are one-for-one.

**Leonard:** Now that you have said that, they'll get a magnifying glass.

**Adams:** That's fine with me, what we're doing here today is a break from a number of council -- or a number of city government permitting decisions. I want to underscore how important this is to me, to the applicant.

**Joslin:** And i'm sure it will can true for the commissioner in charge of at the time the building is constructed.

**Adams:** Is there any further discussion with staff or the applicant representative? If not, is there anyone on council who would like to make --

**Leonard:** Ask testimony the opposing application.

**Adams:** Opposing application? No? Are there any rebuttals? We've done that. We've had council discussion.

**Moore-Love:** I have someone who signed up to support the appeal. Peter meijer.

**Adams:** Welcome, thanks for waiting.

**Peter Meijer:** Peter meijer architect. 21st avenue. At the time of the applicant's introduction to the landmarks commission, I was a sitting member but recused myself because I am the historic expert on the development team. I'd like to testify just perhaps to answer some of the technical questions that were asked. As well as to give testimony that perhaps makes it a little bit easier to put this into a larger context. Rest assured that your decision on -- or the discussion about windows and the appropriate replacement will continue as it happened before, during and after this. Those are healthy discussions. Landmarks commission will continue to hear those discussions, and, in fact, on the day of denial of this particular application, the landmarks commission approved 100% replacement of the meier & frank warehouse windows and so this type of discussion will continue to happen in the future as well.

**Adams:** They approved but didn't act on it?

**Meijer:** Meier & frank warehouse.

**Adams:** Oh, warehouse? Sorry. Sorry.

**Meijer:** The nines was heard by the landmarks commission. I was a sitting member of the commission at that time. The nines are not magnum windows. Magnum windows are defined by the width of the windows. Six-six in this case. Anything -- 6'6".

**Adams:** These windows are six feet wide?

**Meijer:** 6'6". And the wood window manufacturers do not make these windows, so it's not a question of the applicant not desiring this. The manufacturers of the products can't make them. They don't guarantee them anymore. The other one, perhaps on a larger context, the landmarks commission is not there so much to approve or deny or even participate in the design of these buildings that come out. They're really there to look at code and to see that the applicant has done their due diligence in meeting those codes. And by due diligence, I think if you look back at the record, the applicant on a number of coming before the landmarks commission, not -- did not only

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the survey, but also looked into what is involved in restoring the windows, what's involved in replacing the windows, and what's the ramification of a decision either way. And it is really that aspect of the applicant's doing their due diligence, being able to justify their decisions, which is from my personal standpoint, the line of a little bit discomfort in that the landmarks commission will often hear applicants coming forward, we want to replace windows because they're worn. And that is the extent of their presentation. But in this case, the applicant went beyond this to an unprecedented level of due diligence. So I don't think the commission is really out on a limb here in reviewing this as a precedent-setting case. These types of discussions will continue and have continued and I think you can be comfortable in the decision you make today.

**Adams:** Thank you for your testimony. Is there someone who would like to make a motion?

**Leonard:** I would move to approve the appeal and overturn the landmarks commission's ruling with the conditions articulated by my colleague, commissioner Adams, with respect to the review of the proposed windows.

**Fish:** I'm prepared to second.

**Adams:** Moved and seconded.

**Beaumont:** Clarification. The landmarks commission approved this project. The applicant is appealing the conditions of approval with respect to the windows, so you might want to modify the motion to grant the appeal, uphold the landmarks commission's decision, but to modify it with respect to conditions of approval, I think it's b and c. And we -- that will need to be a tentative decision and we'll bring it back to revised findings.

**Leonard:** So moved.

**Fish:** Second.

**Adams:** Council discussion? All right. Karla, please call the roll.

**Fish:** I very much appreciate the thoughtfulness of this discussion and i've been struggling to come to the right conclusion based solely on the evidence and information presented today. The code says generally deteriorated historic features will be repaired rather than replaced. That's the general rule we should follow absent some unusual set of circumstances. I'm perfect situated by the testimony, the due diligence undertaken by the applicant and the unique circumstances of the intended use of this building that they have shown a reasonable exception to the general rule and I appreciate the further limiting condition that commissioner Adams has placed on our ordinance and I think I want to make it clear from this commissioner's point of view, that the general rule is still the standard rule which will apply but from time to time, there are instances where the facts suggest that we deviate from the general rule and bring common sense into our debate. In this case, i'm persuaded there should be an exception and I frankly applaud the developer for the extent of efforts they've made to come up with a historic cliff sensitive replacement feature. Aye.

**Leonard:** Aye.

**Adams:** I want to complement my colleagues on the council for the discussion and thank the staff and the applicant for being part of that. I think it's a very good discussion. I've already talked about my concern that the message here is that this is a unique, not a change in precedent or practice. And I think commissioner Fish summarized it well. I vote aye. This moves to -- do I bang this thing?

**Beaumont:** No, we need to set a date for this to come back. And then you can.

**Adams:** Ok. When do we --

**Moore-Love:** How long do we need. Two weeks? Two? Three?

**Adams:** Take your time, we have all day. Two weeks?

**Moore-Love:** That will be september 4th. At 2:00.

**Adams:** I will not be here. Does that matter?

**Moore-Love:** It will, it will have to be september 18th at -- it's just findings, real quick or -- do we need a whole afternoon or --

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**Beaumont:** We need people who have --

**Adams:** Heard it.

**\*\*\*\*\*:** Heard it.

**Moore-Love:** The morning of the 17th? Commissioner Saltzman will be gone and I have the three of them --

**Adams:** Yep.

**Moore-Love:** Let's do the 17th at -- sorry. Let's do 10:00 a.m.

**Adams:** 10:00 a.m. On september 17th. This hearing is continued. Is that what I say? All right. It's continued and we're adjourned. [gavel pounded]

At 4:25 p.m., Council recessed.