



CITY OF  
**PORLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **13<sup>TH</sup> DAY OF JULY, 2011** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fritz, Leonard and Saltzman, 4.

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

Item No. 718 was pulled for discussion and on a Y-4 roll call, the balance of the Consent Agenda was adopted.

		<b>Disposition:</b>
<b>COMMUNICATIONS</b>		
<b>702</b> Request of Arthur Lewellan to address Council regarding transportation and park issues (Communication)		<b>PLACED ON FILE</b>
<b>703</b> Request of Arn Strasser to address Council regarding July 4th fireworks in Portland neighborhoods (Communication)		<b>PLACED ON FILE</b>
<b>CONSENT AGENDA – NO DISCUSSION</b>		
<b>Mayor Sam Adams</b>		
<b>*704</b> Authorize grant agreement with Oregon Action Fair Share Research and Education Fund for street level gang outreach from July 1, 2011 through June 30, 2012 (Ordinance) (Y-4)		<b>184719</b>
<b>Bureau of Planning &amp; Sustainability</b>		
<b>*705</b> Approve annexation to the City of Portland of property within the boundaries of the City Urban Services Boundary in case number A-1-11, on the south edge of the City on the west side of SW Palatine Hill Road east of SW Terwilliger Blvd (Ordinance) (Y-4)		<b>184720</b>

July 13, 2011

*706	Authorize the Director of the Bureau of Planning and Sustainability to enter into individual grant agreements with local jurisdictions and non-profit organizations for a total of \$41,000 to increase market demand for solar within Portland and select communities elsewhere in Oregon with grant funds from the U.S. Department of Energy (Ordinance)  (Y-4)	<b>184721</b>
707	Authorize Intergovernmental Agreement with Metro to accept \$80,000 for administration of the City Master Recycler Program in FY 2011-13 (Ordinance)	<b>PASSED TO SECOND READING JULY 20, 2011 AT 9:30 AM</b>
<b>Bureau of Police</b>		
*708	Accept and appropriate additional grant of \$25,000 from the Oregon Association Chiefs of Police for the 2010-11 DUII Traffic Safety and High Visibility Enforcement grant program for personnel overtime (Ordinance)  (Y-4)	<b>184722</b>
*709	Accept and appropriate a grant of \$20,000 from the Oregon Department of Justice Criminal Justice Division for domestic marijuana eradication and suppression efforts (Ordinance)  (Y-4)	<b>184723</b>
*710	Accept and authorize a grant of \$37,700 from the Oregon Office of Emergency Management-Military Department FY 2010 State Homeland Security Grant Program for interoperable communications equipment (Ordinance)  (Y-4)	<b>184724</b>
*711	Authorize application to the Oregon Department of Transportation, Transportation Safety Division for a grant in the amount of \$290,304 for the 2011-13 Work Zone Enforcement Program for patrol overtime (Ordinance)  (Y-4)	<b>184725</b>
<b>Bureau of Transportation</b>		
*712	Amend Intergovernmental Agreement with Oregon Department of Transportation to revise the funding contributions and extend construction and project completion dates for the 47th and Alderwood Signals Project (Ordinance; amend Contract No. 30000821)  (Y-4)	<b>184726</b>
*713	Amend contract with Good Sport Promotion, Inc. for volunteer management and recruitment for Portland Sunday Parkway program for additional work and increase by \$1,000 (Ordinance; amend Contract No. 30001129)  (Y-4)	<b>184727</b>
<b>Office of City Attorney</b>		
*714	Amend outside legal service agreement with Littler Mendelson LLC (Ordinance; amend Contract No. 30001850)  (Y-4)	<b>184728</b>
<b>Office of Emergency Management</b>		

July 13, 2011

*715	Authorize application to the Department of Homeland Security for a grant in the amount of \$4,925,160 to enhance emergency preparedness by planning, training and equipping emergency responders (Ordinance)  (Y-4)	<b>184729</b>
*716	Pay claim of John Demarco involving Bureau of Transportation (Ordinance)  (Y-4)	<b>184730</b>
*717	Create a new nonrepresented classification of Human Resources System Manager and establish a compensation rate for this classification (Ordinance)  (Y-4)	<b>184731</b>
*718	Amend contract with Environmental Systems Research Institute, Inc. for geographical information system software maintenance and technical support through June 30, 2014 and increase by \$817,000 (Ordinance; amend Contract No. 40983)  (Y-4)	<b>184743</b>
<b>Commissioner Dan Saltzman Position No. 3</b>		
<b>Bureau of Development Services</b>		
*719	Accept and appropriate a grant in the amount of \$60,000 from Oregon Military Department, Office of Emergency Management for the FY 2010 State Homeland Security Grant for Records Digitization (Ordinance)  (Y-4)	<b>184732</b>
<b>Commissioner Randy Leonard Position No. 4</b>		
<b>Portland Fire &amp; Rescue</b>		
*720	Authorize Intergovernmental Agreement with the City of Gresham for the joint operation of Station 31 (Ordinance; Contract No. 30002163)  (Y-4)	<b>184733</b>
<b>Commissioner Amanda Fritz Position No. 1</b>		
<b>Office of Neighborhood Involvement</b>		
*721	Authorize Grant Agreement totaling \$50,000 to the Immigrant and Refugee Community Organization to administer 2011-12 Graffiti Abatement Youth Walking Crews (Ordinance)  (Y-4)	<b>184734</b>

July 13, 2011

**Commissioner Nick Fish  
Position No. 2**

**Portland Parks & Recreation**

- \*722 Authorize acquisition of real property adjacent to Raymond Park for park purposes (Ordinance)  
(Y-4)

**184735**

- \*723 Approve Intergovernmental Agreement with East Multnomah Soil and Water Conservation District through their Partners in Conservation Program for the Greenspaces Restoration and Urban Naturalist Team job training program for teens (Ordinance)  
(Y-4)

**184736**

**REGULAR AGENDA**

**Mayor Sam Adams**

**Bureau of Police**

- \*724 Authorize application to the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for a grant in the amount of \$648,238 for the Edward Byrne Memorial Justice Assistance Grant Program FY 2011 Local Solicitation to prevent or reduce crime and violence (Ordinance) 10 minutes requested for items 724-726  
(Y-4)

**184737**

- \*725 Authorize an Intergovernmental Agreement with the City of Gresham for the use of U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance FY 2011 Edward Byrne Memorial Justice Assistance Grant Program funds for law enforcement, prosecution, prevention, education and technology programs (Ordinance)  
(Y-4)

**184738**

- \*726 Authorize an Intergovernmental Agreement with Multnomah County for the use of U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance FY 2011 Edward Byrne Memorial Justice Assistance Grant Program funds for law enforcement, prosecution, prevention, education and technology programs (Ordinance)  
(Y-4)

**184739**

**Office of Emergency Management**

July 13, 2011

*727	Amend Code to improve coordination of the City emergency management system (Previous Agenda 693; replace Code Chapters 3.124, 3.125, 3.126, 15.04 and 15.08 and repeal 15.12) 10 minutes requested for items 727-731  <b>Motion to amend to add emergency clause:</b> Moved by Mayor Adams and seconded by Commissioner Fritz. (Y-4)  <b>Motion to accept amendments to Exhibit A:</b> Moved by Mayor Adams and seconded by Commissioner Fritz. (Y-4) (Y-4)	<b>184740</b> AS AMENDED
728	Adopt revision to Basic Emergency Operations Plan (Previous Agenda 694) (Y-4)	<b>36869</b>
729	Adopt 2011 Alert and Warning Annex (Previous Agenda 695) (Y-4)	<b>36870</b>
730	Adopt the 2011 Flood Response Appendix (Previous Agenda 696) (Y-4)	<b>36871</b>
731	Adopt the 2011 Terrorism Appendix (Previous Agenda 697) (Y-4)	<b>36872</b>
<b>Office of Management and Finance</b>		
732	Authorize a Letter of Agreement with the City of Portland Professional Employees Association that amends the July 1, 2010 to June 30, 2013 Labor Agreement between the parties (Second Reading Agenda 698) (Y-4)	<b>184741</b>
<b>Commissioner Dan Saltzman Position No. 3</b>		
<b>Bureau of Environmental Services</b>		
733	Authorize a contract and provide for payment for the construction of the SE 12th & Gideon Sewer Reconstruction Project No. E08661 (Second Reading Agenda 700) (Y-4)	<b>184742</b>
<b>Commissioner Randy Leonard Position No. 4</b>		
<b>Bureau of Water</b>		
734	Amend contract with Shearer & Associates, Inc. to increase compensation and increase the scope of work for the Burlingame Tanks Improvements Project (Ordinance; amend Contract No. 30000960) 15 minutes requested	PASSED TO SECOND READING JULY 20, 2011 AT 9:30 AM

At 10:29 a.m., Council recessed.

July 13, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **13<sup>TH</sup> DAY OF JULY, 2011** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fritz, Leonard and Saltzman, 4. Commissioner Saltzman recused himself at 2:05 p.m. and returned at 3:17 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Roland Iparraguirre, Deputy City Attorney at 2:00 p.m., Linly Rees, Deputy City Attorney at 3:15 p.m.; Kathryn Beaumont, Chief Deputy City Attorney at 5:30 p.m. and John Holly, Sergeant at Arms.

The meeting recessed at 2:20 p.m. and reconvened at 3:16 p.m.  
The meeting recessed at 4:28 p.m. and reconvened at 4:34 p.m.

	<b>Disposition:</b>
735 <b>TIME CERTAIN: 2:00 PM</b> – Adopt the Innovation Quadrant District Transportation System Development Charge Overlay Project Report, establish a fee schedule and amend Code effective November 1, 2011 (Ordinance introduced by Mayor Adams; amend Code Chapter 17.15) 1 hour 15 minutes requested	<b>PASSED TO SECOND READING JULY 20, 2011 AT 9:30 AM</b>
736 <b>TIME CERTAIN: 3:15 PM</b> – Appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett against Hearings Officer's decision to approve with conditions the application of Recology Oregon Material Recovery, Inc. for a conditional use to establish a waste-related use that accepts and processes food waste that is blended with yard debris, within a fully enclosed building at 6400 SE 101st Avenue (Hearing; LU 10-194818 CU AD) 2 hours requested	<b>CONTINUED TO AUGUST 31, 2011 AT 2:00 PM TIME CERTAIN</b>

At 6:15 p.m., Council recessed.

July 14, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,  
OREGON WAS HELD THIS **14<sup>TH</sup> DAY OF JULY, 2011** AT 3:00 P.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fritz, Leonard and Saltzman, 4.

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

	<b>Disposition:</b>
737 <b>TIME CERTAIN: 3:00 PM</b> – Appeal of Ashcreek Neighborhood Association against Hearings Officer’s decision to approve with conditions the application of Tualatin Valley Water District and Garden Home Water District, property owner, for a conditional use to demolish two water tanks and replace with one water reservoir not to exceed 2 million gallon storage at 6217 SW Garden Home Road (Hearing; LU 10-200954 CU AD) 2 hours requested  <b>Motion to deny the appeal and uphold the Hearing’s Officers decision:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-3; N-1 Fritz)	<b>APPEAL DENIED</b>

At 4:20 p.m., Council adjourned.

**LAVONNE GRIFFIN-VALADE**  
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.

July 13, 2011  
**Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

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

**JULY 13, 2011      9:30 AM**

**Adams:** It's wednesday, july 13th. It's 9:30 a.m. Hello, Karla, how are you?

**Moore-Love:** Good, i'm fine.

**Adams:** Would you please call the roll. [roll call] [gavel pounded]

**Adams:** Quorum is present. We'll proceed. Please read the title for communications item 702.

**Item 702.**

**Adams:** Mr. Lewellan, welcome back. Go ahead and have a seat. She'll take care of passing them out, I promise -- passing them out. I promise.

**Arthur Lewellan:** Good morning, council. I'm waiting for the pamphlets to be handed out there. I have one new one to submit regarding the columbia river crossing project. It's this color.

Rendition, an artist's rendition of what the proposed spaghetti, I would like to call it, ramp system for hayden island would look like and I think it's a better rendition. I put it together to portray its impacts and alongside it is the alternative that I believe really needs to be reconsidered. Brought back to the table. Because it has lower impacts. Because first of all, it's a public safety concern. I see the concept d spaghetti ramp system for hayden island as dangerous. Therefore, it should be -- it should not be accepted by the city. It just should not. It's too dangerous and it has other problems along with it that make it not the ideal. Especially when you consider the alternative that came up alongside it just a year ago. Points that I try to make in other submissions written I won't be able to do it in less than two minutes now. But I want to submit it into the record and considered. I don't -- I don't believe the project is ready to go at all. They're saying a year and a half. I just don't believe it. And i'm not worried about it. I think the project can be put on hold for many more years than that and Oregon has construction projects that are more worthy and ready to go and the columbia river crossing project is just substandard. Far below the standards we should be meeting as a city. On the corner of the -- one in particular I mentioned, there's a drawing I want to highlight and make sure it's looked at along with -- it's my own little design for dealing with access from marine drive. Let me see if I can read in the 30 seconds left -- part of my testimony that I wanted to read. I've been an advocate for streetcars and since '95 and light rail since '92 after reading al gore's "earth in the balance." i'm running out of time. May I finish? I'm just wrap it up. The park proposal I wanted to mention and the title of the park was for the south waterfront and it's that double block between i-5 and the park that's there. I think that's a block that needs to be finished in order for it blossom and I suggest the center part of that double block, it's two blocks, be dedicated to parks space, the center of it, as a gesture to the lair hill community hillside so that rather than seeing some building on the edge of the freeway between the freeway and the waterfront and the district, that it opens up that central new park with that community's view. As a gesture for them. And to be able to go forward with that project. So sorry, i'm -- not enough time for me to say everything I wanted to say. But thank you, council.

**Adams:** Thank you, mr. Lewellan. Appreciate it. Always good to hear from you. Can you please read the title for communications item number 703.

**Item 703.**

**Adams:** Mr. Strasser, welcome.

July 13, 2011

**Arn Strasser:** Thank you. I appreciate the city council allowing me to address the issue of July fourth fireworks in Portland neighborhoods. Perhaps someone would say why would you take the city council's valuable time to talk about fireworks? After all, it's only really bad for a night and then just off and on for a week before and after the fourth. Let people have their fun. When I told my 80-year-old neighbor, Mrs. Johnson, I was going to take three minutes and talk to the city council about fireworks, she rolled her eyes. Oh, those fireworks, they scare the heck out of me. I turned the TV way up and even the air conditioning and it doesn't do any good. God, I get scared. Well, I only have three minutes. Well, she answered. Get their attention, you hear? For Mrs. Johnson, I'd like to talk about fireworks and for my cat too. All July fourth evening, she hid under the bed with eyes as big as saucers and for the dogs, many who shake and shiver all night and some who have to be tranquilized. So for the cats and dogs and wild birds and creatures, let's talk about fireworks. And how about those of us who had to go to work the next morning and kept up past midnight, sometimes 2:00 a.m. And even later. We hope you won't mind if we take these three minutes to get grumpy about fireworks. I'm not talking about every neighborhood and not talking about legal fireworks. In my neighborhood in northeast, we're talking about artillery fireworks. Explosions. They begin about 9:00 and go past midnight. Setting off car alarms and scaring 80-year-old women and keeping us up at night resistant to ear plugs and pillows. We know these illegal fireworks are dangerous. A commercial building on Alberta caught fire when a failed illegal fireworks landed on its roof and put out after a second alarm and cost a lot in damages. In the streets of our densely populated neighborhoods isn't it possible that the next time, a house will be hit or one of the bicyclists ride can the streets during the heaviest onslaught. We know that the city is aware of this danger and trying to control it. Fire Marshal Jansen set out an appeal to be good neighborhoods and curtail illegal fireworks activity. Obviously, the experience in my neighborhood experience of many people in other neighborhoods that those setting off huge fireworks explosions don't give much thought about being good neighbors. I think it's important to realize how few people are really involved in illegal fireworks. At 10:00 when I looked down the streets of my neighborhood, it wasn't the scene of families and kids setting off fireworks on the streets. There was a small group down the street, including kids, having a wonderful time setting off huge fireworks but the rest of the neighborhood was eerily quiet. People were hunkered down in their houses waiting for the explosions to end. What should we do, or should we do anything? There are those who view regulating illegal fireworks to be another example of an overbearing government taking away individual rights. Need balance between individual rights and the peace and safety of the community. So, yes, I do think we should do something. Here are suggestions that the council might consider. One, set a curfew. A 10:00 or 11:00 p.m. Curfew seems to be a good beginning. Two, get Portland neighborhoods more involved. The noise and disruption of illegal fireworks is a neighborhood issue. Some neighborhoods are more affected than others. Neighborhood associations need to empower neighbors to monitor for illegal fireworks and increase efforts to promote a safe July fourth. Three, create a designated fireworks hot line. To identify troubled areas and send fire department officials to investigate. Portlanders are reluctant to call the police non-emergency number to report on their neighbors. Four, consider upsetting a citizens' taskforce and ask a taskforce to monitor July fourth fireworks next year. And to report to the council. Finally, the degree to which illegal fireworks have become a problem is inconsistent with Portland's reputation as a progressive livable city. Illegal fireworks create an environment of chaos and fear, use costly emergency resources and create tension between neighbors. Let's hope we can make July fourth a happy and enjoyable time for all of us, including my neighbor, Mrs. Johnson. Thank you.

**Adams:** Sir, I want to thank you for your thoughtful communications and make sure we have a copy of it and because you invoked Mrs. Johnson's name, you got five minutes, instead of three.

July 13, 2011

**Fritz:** Tell her she made a difference.

**Adams:** She made a difference already. That gets us through the consent agenda -- gets us to the consent agenda. Does anyone want to pull any items?

**Saltzman:** I'd like to pull 718.

**Adams:** Ok. 718 is pulled. What do you want to do with it?

**Saltzman:** Questions.

**Adams:** Ok. Any other items to be pulled? All right. Then please call the vote on the consent agenda.

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

**Adams:** Aye. [gavel pounded] consent agenda is approved. That gets us to the regular agenda. Can you please read the title for 724, 25 and 26.

**Item 724, 725, and 726.**

**Adams:** Hi, welcome.

**Bob Del Gaggi, Police Bureau:** Good morning, mr. Mayor. Commissioners. I'm bob, the business operations manager for the police bureau and I have a short statement to read related to the application for this grant. The police bureau wishes to apply to the u.s. Department of justice office of justice programs bureau of justice administration for the edward byrne memorial justice assistance program fiscal year 2011, local solicitation to prevent or reduce crime and violence. This public body review -- governing body review of the grant application and the related intergovernmental agreement provides an opportunity for public comment and involvement. This is a satisfy -- satisfies a solicitation requirement for the justice assistance grant. The edward byrne memorial justice assistance program, funds made under disparate certification to the city of Portland, Multnomah county and the city of gresham. And requires the city to require a joint application to the aggregate eligible allocation to all municipalities and act as fiscal agent for the grant. Intergovernmental agreements must be executed with Multnomah county and the city of gresham in order to obligate agency roles, responsibilities and this is addressed in item 725 and 726, the aggregate amount is \$648,238. There's no match requirement for this grant. The applications as follows: The city of Portland will receive \$320,852. Multnomah county will receive \$252,099. And the city of gresham, \$75,287. Portland police bureau will use \$320,852 in justice assistance grant funding for the following items. First, to hire one full-time equivalent management analyst to ensure city compliance with outside audit recommendations and ensure bureau compliance and documentation of internal review of \$83,955. The second is to retain one full-time equivalent police administrative specialist to support the police bureau's detective bureau, \$66,730. The fourth item is purchase protective gear and safety equipment. 48 national suit of justice compliant tactical ballistic vests at a total cost of \$30,167. Final item is to contract with a local treatment provider to coordinate treatment, temporary housing and counseling and training opportunities for individuals involved in prostitution related offenses at a cost of \$140,000. This will be a component of east precinct prostitution coordination team, a multidisciplinary partnership, that includes police and parole and probation, Multnomah county district attorney's office and Multnomah county sheriff's office and local treatment providers. With respect to Multnomah County, it will use \$252,099 in judicial assistance grant funding for: First, to hire .72 fte for a neighborhood deputy district attorney for 12 months at \$84,033. The second will be to hire .74 fte parole and probation officer for 12 months at \$84,033. Third, would be to hire .62 full-time equivalent corrections deputy for 12 months at a total cost of \$84,033. Finally, the city of gresham will use \$75,287 in justice assistance grant funding to hire a property evidence technician for 12 months. At this point, i'm open for any of your questions or questions and comment from the public.

**Adams:** Any questions from the council.

July 13, 2011

**Saltzman:** You said \$80,000 is for a management analyst to do -- is that a management analysis to ensure compliance with the grant?

**Del Gizzi:** No, this -- this analyst will be assigned to the professional standards division and related to recommendations for the bureau as well as internal review processes to the bureau.

**Saltzman:** Ok, thanks.

**Adams:** I'd say that that position and the -- in this grant is -- comes at a -- continues at a very important time, given the recommendations that we're looking forward to out of the u.s. Department of justice's review of the bureau.

**Del Gizzi:** And this is related.

**Adams:** Anyone wish to testify? Commander, could you come forward a second? How many years in the bureau?

**Commander William Walker, Police Bureau:** 29 and a half, sir.

**Adams:** After 29 and a half years of fantastic service to the people of Portland, commander walker is retiring and I wanted to take this opportunity on behalf of the city and the city council to thank you for your almost three decades of service, and especially underscore the work that you've done to bring equity of service to east Portland and work on a number of really difficult vice crimes including the most recent great effort around human sex trafficking. We're very grateful for your service and wish you all the best in your retirement.

**Walker:** Thank you, mayor. It really has been a privilege and honor to serve the citizens of Portland for nearly 30 years. It's been a great opportunity for me and it is with great regret I do have to retire. But 30 years of service is long enough. But it really has been a pleasure. It's been a pleasure working with several council members over the years and appreciate it and thank you very much.

**Adams:** Happy retirement.

**Leonard:** Do you have anyone coming up after you in your family?

**Walker:** My son currently works for the clark county sheriff's department, has worked for them for 14 years and I have a son-in-law who works for clackamas county sheriff's office as well.

**Leonard:** I think it is important to point out that he's the son of the former chief, nick walker who is a good friend of mine and is equally as respected, so it is good that the tradition continues.

**Saltzman:** I hope they will consider lateral transfers to Portland. We have a position.

**Adams:** Now that Dad's gone.

**Walker:** I tried several times.

**Fritz:** thank you for your service

**Saltzman:** Thank you, commander walker.

**Walker:** Thank you very much.

**Adams:** Anyone wish to testify on these neither matters? Karla can please call the vote on all three, one by one?

**Item 724 vote.**

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

**Fritz:** Mayor, I appreciate you putting this on the regular agenda, not only to thank commander walker but to explain to citizens how we get some of the money that goes out to the other jurisdictions and why we pay for work for Multnomah county and that was a good explanation and I want to complement the police bureau and the public involvement -- what's it called? Public involvement assessment that's now required on every council item. You did a really nice job of explaining what the public involvement was and how public involvement was involved in this grant application. I really appreciate that. Thank you. Aye.

**Adams:** Again, thank you. Thank you. Aye. [gavel pounded] your last city council appearance is almost over.

July 13, 2011

**Item 725 vote.**

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

**Adams:** Aye. [gavel pounded] 725 is approved. 726.

**Item 726 vote.**

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

**Adams:** Aye. [gavel pounded] 726 is approved. Thanks.

**Del Gizzi:** Thank you very much.

**Adams:** Please read the titles for 727, 728, 729, 730, 731.

**Item 727, 728, 729, 730, and 731.**

**Adams:** We have a number of amendments as a reminder to folks following these items and my colleagues, we have three hearings. This will be our third hearing and I described we would have three hearings so we could do amendments and outreach for the entire three, four weeks. And that today that I would, therefore, move, though, to attach emergencies to each of these, so that having three, four weeks of hearing, we could then move to implementation, so i'm going to do that piece first of attaching the emergency clauses so that that's the basis for our discussion. So I move that we attach the emergency clause to 727.

**Fritz:** Second.

**Adams:** Moved and seconded. Any discussion? Karla, please call the vote on the motion to attach the emergency clause to 727.

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

**Adams:** Aye. [gavel pounded] getting used to that new order, aren't you? [laughter]

**Adams:** I move to attach -- [inaudible]

**Moore-Love:** That was handed out yesterday in the tuesday memo, I'll get you a copy.

**Adams:** Thanks for double checking. Move to attach the emergency clause to 728.

**Moore-Love:** Those are resolutions so they can be voted on and effective immediately once they're passed.

**Adams:** All of those are?

**Moore-Love:** Yes.

**Adams:** Great. I thought we'd have to do it for all of them. All right. Director merlo.

**Carmen Merlo, Office of Emergency Management:** Thank you, mayor --

**Moore-Love:** Excuse me Carmen, Did you want to do the exhibit a amendment?

**Adams:** We're going to do a whole bunch. That was the first step.

**Merlo:** Since last week, we've got several new amendments I want to go over and I want to thank commissioner Fritz for pointing one very important one out to us. Briefly, we put back in one of the director powers that we inadvertently cut out and that's the bureau director's ability to reassign employees to the emergency coordination center during an emergency event. We added another responsibility of the office to evaluate the effectiveness of the city's response to a emergency event. And then the biggest changes have to do with the lines of succession to the mayor during an emergency. We had it a little bit wrong. And -- in code earlier. So the way it used to read was if the mayor was unavailable, then his duties would go to the president of the council, then to the councilmember that formerly served as president of council and then to the member -- the commissioner holding the lowest number. That wasn't exactly right. The way it should read according to code is going from the president of the council to the councilmember who previously served as president of council, and then to each successive person who formerly served as president of council before reverting to the commissioner with the lowest number. We corrected that in this section of code. We additionally provided further succession planning in the event all of those people were unavailable. So, following charter, the next in line would be the city auditor, the city attorney, the cao. Then it would be the executive assistant to the mayor, then the executive

July 13, 2011

assistants to council members based on their seniority as an executive assistant and finally bureau directors with the largest bureaus based on the number of full-time employees. So a mouthful.

**Adams:** If we lose both buildings and a couple more, we have a succession plan.

**Merlo:** Right, pretty deep.

**Adams:** Deep succession. [laughter] so these are amendments to which item?

**Merlo:** These are the code changes both to title iii and title xv.

**Adams:** All contained in 727?

**Merlo:** Yes.

**Adams:** Are there more amendments we're doing today than 727?

**Merlo:** Those are the new amendments since last week.

**Adams:** I'd move the amendments as offices received and underlined and strikeout.

**Fritz:** Second.

**Adams:** Moved and seconded. Discussions? Karla, anyone wish to testify on the motion -- Karla, please call the vote on the motion.

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

**Fritz:** I very much appreciate director merlo coming to my office and the city attorney's office and work through the issues and the right collaborative and helpful process. Thank you. Aye.

**Adams:** Aye. [gavel pounded] all right. Are there other amendments to any of the items before -- so is there anyone that wishes to testify today on any of the items between calendar 727 and 731? Please come forward. Give us your name and you'll have three minutes.

**Joshua Patterson:** Thank you, mayor and councilmembers. I'm joshua patterson, a member of internal communications. A steering member for the neighborhood emergency team. And I want to take less than three minutes to say thank you for your hard work and thank you to carmen merlo for making our emergency neighborhood teams and our emergency operations for the city of Portland, such a priority and it's good as a citizen to know that our city is focused on protecting its citizens in the event of an emergency. Thank you.

**Adams:** Thank you for you and your team's continued efforts to keep us safe. Let's roll through the vote starting with 727.

**Item 727 vote.**

**Saltzman:** Before we do that, Was there going to be an update on 731, the terrorism?

**Merlo:** I did talk with ellen Osoinach, we don't feel there's really anything to change in the appendix as a result of council decision to rejoin the terrorism taskforce.

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

**Fritz:** Well, thank you, mayor, for takeing the time to allow these details to be worked out. Aye.

**Adams:** Happy to. Aye. [gavel pounded] 728.

**Item 728 vote.**

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

**Adams:** Aye. [gavel pounded] approved. 729.

**Item 729 vote.**

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

**Fritz:** I want to add my thanks for the net team members. Thanks for being here again today. Aye.

**Adams:** Aye. [gavel pounded] 729.

**Moore-Love:** That was 729.

**Adams:** 730.

**Item 730 vote.**

**Adams:** I liked it so much I wanted to vote on it again.

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

**Adams:** Aye. [gavel pounded] 730 is approved. 731.

July 13, 2011

**Item 731 vote.**

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

**Adams:** Aye 731 is approved. [gavel pounded] 730 -- that's it? Congratulations. [laughter] [applause] and there's a new hire. Do you want to announce the new hire?

**Merlo:** Thank you, mayor.

**Adams:** A point of personal privilege.

**Merlo:** I wanted to thank you for reminding me, introduce to you a very familiar face to all of you, Randy Neves is our new public information officer.

**Adams:** Welcome to the team.

**Randy Neves, Office of Emergency Management:** Thanks for having me.

**Adams:** That gets us to -- please read the title and call the vote for 732.

**Item 732.**

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

**Adams:** Aye. [gavel pounded] 732 is approved. Please read the title and call the vote for second reading, 733.

**Item 733.**

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

**Adams:** Aye. [gavel pounded] 733 is approved. Please read the title for non-emergency ordinance, council item 734.

**Item 734.**

**Adams:** Commissioner randy Leonard.

**Leonard:** David Shaff.

**Adams:** Director shaff.

**David Shaff, Administrator, Water Bureau:** You're going to set me up? Ok. I'm david shaff, administrator of the Portland water bureau, based on what you just did, somewhere between 25th and 30th in the line of succession. With me are chief engineer mike and keith walker, the program manager for tanks and pump stations here in the Portland water bureau. Thank you. The ordinance -- and today is my first ever power point presentation to you too. This is a big day. The ordinance we have for your consideration is to amend the contract with sheerer and association to increase compensation and scope of work for the burlingame tanks improvements project. The reason i'm making this formal presentation, including power point is because this is change order number five and because the cost and scope of this project has increased significantly since we first started in 2009 and wanted to walk you through why that's the case. So burlingame tanks two, three, four were built in 1943, 1951 and 1958 respectively. Fed from the fulton pump station down near the banks of the Willamette River and up to the storage complex located near wilson high school and water is distributed from the burlingame complex to the majority of southwest Portland from either a direct supply from the tanks or feeding additional storage tanks. They're a critical piece of the our infrastructure. We entered into a contract with sheerer and associates for just over \$638,000 in November of 2009 for work on the three tanks that are there. The original scope of the project included a number of things. That was to replace the existing steel roofs on tanks two and three with aluminum, strip the interior of the shell of all three tanks to bare metal above the existing lining and repaint. Strip the interior roof of tank four to bare metal and repaint. Repaint the exterior wall three tanks after spot treatment. Replace the interior platforms inside all three of the tanks. You get to the tanks from an outside ladder and then there are platforms that connect the tanks together. There's one exterior ladder on the inside. To get inside, there's an interior platform near the roof of the tank. That's one of the -- one of the items we -- that was part of the original contract was to replace those interior platforms. And then to replace the tank's safety feature, the fall arrest systems such as the railings and upper connecting platforms. When our people are on

July 13, 2011

top of the tanks or inside they're harnessed into fall arrest -- trying to think of the word -- systems that prevent them from -- or protect them in the event of an accident, a slip or fall, that sort of thing. And then we're going to install new instrumentation and cathode protection for all three of the tanks. The scope of the work was based on an evaluation in 2005 as part of our Burlingame master plan the we decided to replace the roofs of tanks two and three. We didn't note any structural defects for tank number four. We continued to do evaluation of the condition of the steel of the tanks during design phase but decided against it because due to the low risk that additional structural defects could be discovered and the high cost doing an evaluation. During the 2005 evaluation, we noted that the interior platform I mentioned -- platforms and the fall arrest anchors had all deteriorated. And any additional evaluation would have required us to drain them, to erect scaffolding inside of the tanks estimated at a \$100,000 cost. So we didn't do that. So we get the contract for \$638,000. The first change order was addressing a minor safety issue for \$455. Change order two was fairly significant. That's -- and we brought that to you in April 2010 -- to replace the roof and the upper eight feet of the shell of tank four which we discovered to have significant deterioration after we erected the scaffolding on the inside. These are pictures of the interior condition of tank four during the 2005 evaluation. And you can see why we decided that the paint needed to be replaced on the roof. However, once we got the scaffolding -- oops, wrong button. Once we got the scaffolding installed and you can see that in the upper left-hand picture on the interior, we were able to determine that since 2005, the paint has completely failed and the steel is deteriorating. If you look, the roof connection to the steel walls of the tank are badly corroded and unsound. We made the decision and change order number two to replace the roof of the tank and you can see how big the tanks are by looking at this picture with the crane removing the top of tank number four. I counted the rings and there are I think ten rings of scaffolding and I'm guessing around seven feet --

\*\*\*\*\*: All tanks are about 70 feet tall.

**Shaff:** We're talking about a tank that's fairly tall. The cost of this change was \$371,000 or 58% of the original contract and required your approval. We made the decision then to have the extra work done by our contractor through a change order. Primarily because of the operational risks of having these tanks out of service for a longer period. These tanks are a necessary part of our distribution system that needed to be back in service as quickly as possible before we began or peak demand in the summer. And continuing with the original scope of work, just painting the work of roof four wouldn't have made sense and it would have a significant cost in erecting scaffolding which would be utilized for the extra work. That was change order two. Change order three came after draining and erecting the scaffolding inside tank three. We discovered the upper four feet of the side wall of the tank had deteriorated and needed to be replaced and you can see that in the upper left-hand corner picture where the steel at the top connection to the tank is badly corroded and then if you look at the one in the lower right-hand corner --

**Adams:** That's a screwdriver in the wall?

**Shaff:** It is indeed, through the top of the tank. It corroded to the point where that top four feet of tank three had to be replaced. That change order was approved by council October of last year and was primarily for replacing the top four feet of tank three and replacing the grout at the base of two of the tanks installing interior ladders and including a contingency for things that we might find in tank two that we may not be aware of.

**Fritz:** May I ask a question. If the top four feet is corroded, how do we know if we drained it and tried to stick a screwdriver through further down, that it wouldn't be that also?

**Shaff:** At this point, the tank is drained and we were going through the inspections of the entire front inside and outside of all of the tanks.

**Fritz:** Why would it corrode more at the top rather than where the water is?

July 13, 2011

**Shaff:** Because it's open to the atmosphere.

**Fritz:** That's ok, that's a good enough --

**Shaff:** Chlorine and ammonia are fairly corrosive and that's where the corrosion is going to occur at the top where it's gaseous.

**Fritz:** Thank you.

**Shaff:** Ok, so that was change order number three. Change order four was a simple order that add 23 days of contract time but no additional compensation. So the purpose of change order five and why we're here today, as part of the exterior repainting in the original contract, spot repair was required where the existing paint had failed down to the steel -- or the existing coating had failed down to the steel. Prior to repainting the entire tank. We estimated that was going to be approximately 15% of the area of the tank. The actual required spot treatment you can see is significantly more than that. It's the purple areas that you see on the tanks. And the negotiated change order for this one is approximately \$41,000. Of the original contract, however, we are only seeking authorization for \$11,780.85. Because the rest is covered by contingency. What you see is tanks -- the tanks in their new pristine condition with new aluminum roofs and new exterior ladders and on the right-hand picture, there's a person on the platform that connects two of the tanks and there's another one on the other one and new fall arrests and new interior platforms and the tanks are good to go for a number of decades for -- for a number of more decades. The total change orders for this project add up to \$583,000. Or 91% of the original contract. Almost all of the changes were the result of the different site conditions we discovered when we got the scaffolding up inside of the tanks and outside the tanks. Only just over \$8,000 of the final costs were owner elected changes or 1.3% of the original contract. So we'll be returning to council in approximately a month after this change order takes effect with a report to council to authorize final payment for the project. But that will be submitted via consent agenda. Won't go through this briefing all over again. Not with standing this particular project, our total historical change order rate is about 11%. Which is good. Excluding different site conditions like those we've been dealing with in this project, the challenge order rate is actually only 4%. In other words, the majority of change orders we bring to you that occur or we have to bring to you are driven by what we find when we really begin a project. We own a total of 58 storage tanks of which 25 are steel tanks like these. We performed a condition assessment in 2006. 11 of those steel tanks have had exterior inspections in the past year. Of those, four tanks had interior assessments performed within the past three years. Inspections of all 25 steel tanks will occur in house on a five-year rotating basis concurrent when we clean them. One tank constructed in 1942, the council crest tank, was built around the same time as burlingame. Number two and has the same construction and requires the similar improvements as the burlingame and we'll come forward with a project on that soon and two of the tanks will be replaced with pump station improvements and taken out of service. If you have any questions, i'll be glad to answer them and if I can't, mike or keith should be able to.

**Adams:** I have a question. The -- obviously, this is -- this type of back log of corrosion and maintenance has been around for a while. Ideally, for burlingame tank, just to educate myself, was there something that -- so it's gone or for decades, but is there something early on that could have prevented that?

**Mike:** I think the biggest thing, early on, this is kind of a -- you know, there's a judgment call whether you want to build the scaffolding and dump the tank and do the assessment. If you've kept your inspections up and so on, you should usually see what you need to see. Generally, we do projects like this based on estimating factors for what kind of stuff you expect to find and they're generally pretty accurate. To me, in a way, this is a good news story. In 2005, we started off on our asset management plan and acknowledged in the past we weren't doing new in the routine maintenance world and we've been stepping carefully through preparing asset management plans

July 13, 2011

on our assets and including the steel tanks and stepping out and doing the assessments. I think what david mentioned in the beginning and you may or may not have caught can we're going to start doing the assessments when we take the tanks down for cleaning which we do every five years and have a look. But probably still won't erect scaffolding and so on because it's really pricey and in the main can most of the time, the estimating factors to this type of work are fairly accurate and in the end, ends up being cheaper to the estimating factors and be prepared with contingency. When we let these kinds of contracts, they're priced in unit pricing, price per square foot to fix a patch or weld and we have a contractor who can do it. In this case, we were lucky we had a really good contractor who was experienced in lifting roofs and I would hope with our new program I don't think we'll go through this again.

**Adams:** I hope.

**Saltzman:** So the screwdriver test isn't a standard operating procedure?

**Mike:** No, but it's good for photos.

**Adams:** It will now be.

**Saltzman:** Where are the burlingame tanks.

**Mike:** On top of the mountain, the hill.

**Shaff:** Within a couple of blocks of wilson high school. I can't tell you which street.

**Saltzman:** I know where they're are.

**Adams:** When you're at wilson, you can see them.

**Mike:** One thing we didn't talk about as much. From an operational point of view, we don't want the tanks empty in the summer. We run full all the time in the summer to keep water supplied up on top of the west hills so we're very careful and cautious when with take them down and how long they can be done.

**Adams:** Just a bigger context to make sure that the public can connect some dots. Since 2005, when council started pushing all bureaus to really work on the life cycle, to go out and look inch by inch and in addition to the formulas for being able to calculate because a lot of stuff is underground and you don't want to dig it up to look, if it's ok, but since '05, when we started to do the life cycle cost analysis, this is an example of you said that, it in turn is one of the drivers of why we have to raise rates to get on top of what has been a maintenance backlog in water. And the life cycle costs analysis laws us to be more precise about doing that in a smart manner but it is a maintenance backlog, is that true?

**Shaff:** Yes, and even though a lot of our material is underground and hard it look at we will do asset management plans on some of our critical infrastructure. For instance, the transmission pipe that goes under i-5 up to the hill, we've actually looked at that one. We haven't looked at the one on my street that was laid in 1910 but it's not a particularly critical infrastructure. When it fails, we'll fix it. Otherwise, we don't be digging that one up.

**Adams:** Thank you.

**Shaff:** Thank you.

**Adams:** First reading, anyone like to testify on this matter. Unless there's additional council discussion this moves to next week. [gavel pounded] i'll take the pulled item of the consent agenda. Please read that item.

#### **Item 718.**

**Adams:** Looking at director moody.

**Christine Moody, Procurement Services:** Christine moody, procurement services. Code 5.33e12 allows the city to renew existing contracts for software maintenance without competitive solicitation where the maintenance can be obtained from the city's current provider to utilize the preexisting knowledge of the vendor regarding the specifics of the software system. In 1988, the information technology executive committee recommended that the city move to a standardized

July 13, 2011

geographic information system environment for the city's enterprise gis. The environmental systems research institute software product was determined by the committee to be the right tool for the gis system and at that time, city council granted approval to enter into a contract with esri. In 2006 and 2009, city council approved amendments to the esri contract for continued maintenance support and licensing. Today you have before you an ordinance recommending an amendment to environment research contract to allow for an additional three years of software maintenance, technical support and continued licensing for the city's gis system. The amount for the three-year extension is \$817,000. The source of funding is the bureau of technology services operating budget. Rick Schulte is here to answer technical questions.

**Saltzman:** I was concerned about the pattern of large renewals of the contract. But I guess this is a software license, how much of the \$817,000 is for the licensing?

**Rich Schulte, Bureau of Technology Services:** The -- it's a unique licensing agreement in which we have unlimited use of their entire products -- suite of products. We can employ as many licenses as we want without incurring additional costs. The licenses and maintenance of the software, upgrades and ongoing support. It's an all- encompassing licensing agreement that allows all bureaus free access, free to use all the technology they have within their bureaus and businesses.

**Saltzman:** It's not like i'm cheering for more software projects, but did we look at the beginning of each three-year renewal period, whether there's another provider or --

**Schulte:** Yes, I mean, as christine mentioned, this is our ongoing third amendment and so at the end of each contract we reevaluate the industry. The standards that are out there and renegotiate based on our levels of usage and renegotiate the price. So we do that, we take that opportunity at each juncture. Since 1999 when the city began and standardized on the esri software in the community, over the course of the last 10 years, that's -- that standard has been adopted across the country, most federal, state and local agencies and here in the region, the state of Oregon in 2008 declared it the standard for the state of Oregon and have an enterprise license agreement with them as well as metro, clackamas county, Washington county, clark county, everybody is -- has standardized on this product which allows us good interoperability between us and various jurisdictions.

**Saltzman:** Ok. Good answers, thanks.

**Adams:** Was this an emergency or non-emergency?

**Saltzman:** emergency.

**Adams:** Can you please call the vote.

**Saltzman:** Thank you very much for the answers. Appreciate it. Aye.

**Leonard:** Aye. **Fritz:** Aye.

**Adams:** Aye. [gavel pounded] approved. We're in recess until 2:00 p.m.

At 10:29 a.m., Council recessed.

July 13, 2011  
**Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

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

**JULY 13, 2011      2:00 PM**

**Adams:** Wednesday, july 13, 2011. We're in the 2:00 p.m. session. Karla, please call the roll.

[ roll call ]

**Adams:** A quorum is present. We shall proceed. Can you read title for 2:00 p.m. Time certain.

**Item 735.**

**Adams:** Commissioner dan Saltzman.

**Saltzman:** Thank you, mr. Mayor. I must recuse myself from this decision making because I have economic interest in property inside the proposed overlay district. I will leave and be back at 3:15.

**Adams:** Thank you, commissioner Saltzman. Staff, please come forward.

**Shoshanna Oppenheim, Bureau of Transportation:** Good afternoon.

**Adams:** How are you?

**Oppenheim:** I'm good, how are you?

**Adams:** Good.

**Oppenheim:** Good afternoon, i'm shoshanna, the matter today is part of work that the bureau and the city have been doing since 2009 to establish the funding strategy for the Portland-milwaukie light rail. As you may remember, we met on april 6th, where council adopted the funding iga with tri-met, committing the city to \$55 million to contribute to the Portland-milwaukie project. The city council also accepted the staff recommendations related to the overlay district that we're here to discuss today and resolve to implement the TSDC overlay. Also you directed bureau of transportation to notice today's hearing and because of the importance of today's hearing we sent a notice to all affected property owners within the overlay district. We also attended several neighborhood meetings, including the hosford abernathy neighborhood association meeting, brooklyn action core, hawthorne business association, division-clinton business association, a Portland-milwaukie light rail clinton area open house, a Portland-milwaukie light rail ped and bike community meeting, the central eastside land use committee as well as the central eastside urac. We were also invited by omsi to attend a meeting they put together of stakeholders on the central eastside. Our efforts were to discuss the fee and impacts to properties in the overlay district. You may remember there was pretty robust discussion about some elements of today's ordinance and we've included those elements in today's ordinance. Those included having the overlay district expire at 20 years or when we receive revenue of 14.2 million. We also included that any changes to the project list be brought back to council. Basically here we are today at today's council hearing, there will be a second reading on july 20th, and i'll start the protest period, the implementation is scheduled for november 1st. I'd like to introduce our invited guests who will highlight the importance of the overlay district. Michael tevis, the owner of the ford building at 11th and division. Paul carlson from omsi, and mark from psu.

**Adams:** Welcome. I think welcome back for most all of you.

**Oppenheim:** Michael, do you want to start?

**Michael Tevis:** Sure. Mayor Adams, members of the city council, thank you for giving me an opportunity to spoke to you today. My name is michael tevis, I live in northern california, but have invested in the southeast beginning in about 2006. We currently own about 125,000 feet of

July 13, 2011

commercial space located on southeast division street between 12th and 8th. Just around the corner from the proposed clinton and 12th light rail. And just across the train tracks from the bicycle highway, i'm happy to say. Over my 15 years in development, i've acquired and developed over a million square feet of commercial and industrial space and residential space. I'm giving you context for my opinion here. And over 15 jurisdictions. Many of them in northern california and some in Oregon. Of all those jurisdictions, the city of Portland is the best to deal with. And it's definitely my favorite jurisdiction to work within. So I want to thank you guys for that, first and foremost, because I feel you guys do a lot of things very well here, and having processed other projects in the past, I know that it's much more normal to receive criticism than support.

**Adams:** You can talk as long as you like. [laughter]

**Tewis:** I'm a supporter of the light rail, i'm a supporter of parking, i'm supportive of alternative forms of transportation, like bicycles and walking. All these forms of transit are within 100 yards of our projects in the southeast. We believe in offering affordable space that provides opportunities for artists, for start-ups, for small businesses and small retailers to prosper and thrive. In fact, our community of over 80 tenants in the buildings around it are in fact thriving, and they're doing well. The milwaukie line and bicycle highway will further enhance this opportunity. As you know, developers do not like fees. But in this case, from my perspective, we're willing to pay fees and fee increases when we see the benefit. Very clearly I think the city of Portland has put its money where its mouth is and is providing infrastructure at a tough time to make these types of decisions to spend money. I again support you for that because it's going to create jobs and new opportunities. This system, which will link our really greater neighborhood to the downtown and to milwaukie is going to do nothing but positive things. I any that the other thing that is worthy of consideration from a developer's perspective is transit hubs should have associated transit density. So while paying to play is worth it from a developer's perspective, this isn't the time that you're going to consider this matter, but i'm taking it as an opportunity to ask you to consider overtime properties within a walking distance a half mile or so from these transit hubs that are being newly created by the light rail. I think should be considered for higher and better uses than one story industrial warehouses. We think that would benefit the community in that district. I appreciate that it's a tough position that the council is in, but you guys have done this before, and I just want to show that our support is strong and steadfast. We've invested heavily in our buildings and we're continuing to renovate and invest in supporting entrepreneurialism and new businesses. We think investing in the central eastside makes sense, and I thank you for the opportunity to present our position.

**Adams:** Thank you. And thanks for being in turn, you've earned thanks for being a quality developer, investor, manager and owner that you are, among other things, of the ford building. We really appreciate it.

**Tewis:** Thank you.

**Mark Gregory:** I'm mark gregory, acting Vice-president of Portland state university. I'm here today to say that Portland state university is a strong supporter of light rail and closing the streetcar loop. In fact we're a strong supporter of everything that's on the project list related to this tsdc. I travel around the country and I talk about Portland and I talk about Portland state, and the thing that everybody asks me after I get off stage talking about our city and our university is how did you achieve the transit numbers that you achieved, the bike use, pedestrian use, the light rail use. We have a fantastic system, and over the years we've made the necessary sacrifices to build a fantastic system and think it through, and we have great partnerships in the city of Portland that make it all happen. And this is another one of those decision points. I know Portland state really -- we have a -- are a developer and we will pay this fee. We intend to grow by about 4 million square feet over the next 25 years, which is almost a doubling of the physical campus. We'll be serving another

July 13, 2011

20,000 students and probably doing four times as much research as we do today. We need to continue this long-term vision with regard to transportation. And the tsdc overlay zone is a way to make it possible. So i'm here to express Portland State's full support and thank you for your vision thus far.

**Adams:** Thanks for being a great partner. It wouldn't happen without your support. Sir?

**Paul Carlson:** Yes. Mayor Adams, commissioners, my name is paul carlson, i'm a senior vice-president for the Oregon museum of science and industry. We too are here to endorse this project, the transportation system development overlay district. I've been privileged to represent the museum on the Portland streetcar advisory committee, the Portland-to-milwaukie light rail advisory committee, and the citizens committee related to the transportation system development charges. As you know, our property will be the nexus of both streetcar and light rail extensions, and we have very ambitious plans as psu does for the development of our property. And we see this transportation nexus is critical to the growth of our museum, and very important to the development in the lower central eastside. So we strongly support the funding for light rail, which is going to be critical to our future growth for the streetcar project, which we sincerely hope will include the -- close the loop project. The relocation of water avenue, which is essential to ensure good transportation, both in and out of the district for our visitors and also for freight movements. So finally we offer our strong support for the tsdc overlay financing mechanism, as with psu, we expect to have major developments. We will be subject to this fee, but we believe that the benefits outweigh the additional cost. Thank you.

**Adams:** Thank you. Questions from council? Discussion from council? Thank you as well, and as a 'to be' developer, we're excited about the vision of omsi, right adjacent to hopefully soon we'll have the full amount of money we need to make the connection for the full loop. So thanks as well.

All right. Discussion from council? Questions from council? Is there more presentation? Does anyone wish to testify on this matter?

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

**Adams:** All right. This is a nonemergency ordinance, so it --

**Fritz:** Before you move on, we have some concerns about the sunset which is in the ordinance, and the list of projects which was also in the ordinance. Am I taking it from the lack of testimony the neighborhood is satisfied that hand is reasonably satisfied? Did you want to come and testify? Sorry to put you on the spot, as linda is coming up i'd like to mention I very much appreciate the public involvement assessment that was included in the document, it was very thorough. And I realize you're not testifying on behalf of anybody, but I just wanted, since you're here --

**Linda Nettekoven:** Yes. I think the neighborhood is -- again, i'm -- I can't speak in a formal way

**Fritz:** Give your name for the record.

**Nettekoven:** Linda Nettekoven, acting chair of the hosford abernathy neighborhood association. I know that concerns continue -- the only concerns i'm aware of are impacts on some of the smaller property owners in the central eastside, I know you received a letter from the urban renewal advisory committee which I was attending, so those concerns have been discussed at the neighborhood association level as well. Just wanting to make sure we're not impinging on the ability to folks who have been there a long time to do smaller scale things in terms of their improvements or expansions. And there's quite a bit of concern that comes from that part of the business community. And we try to be receptive to those concerns.

**Fritz:** Thank you very much. I apologize again for putting you on the spot. And knowing the project staff show the neighborhood will continue to be involved, and with all -- most of the things we do, it can have other durations -- we did receive a letter from the Portland business alliance

July 13, 2011

expressing some concerns. I know the mayor is always looking for continual improvement and continuing evaluation, so i'm -- with that i'm comfortable moving forward with it. Thank you. **Adams:** All right. [gavel pounded] we'll have a second reading and vote next week. We're in recess until 3:15.

At 2:20 p.m., Council recessed.

At 3:16 p.m., Council reconvened.

**Adams:** City council will come back to order. Karla, please call the roll. [ roll call ]

**Adams:** A quorum is present and we shall proceed. Please read the title for 3:15 time certain, item number 736.

**Item 736.**

**Adams:** How many of you have been to a city council meeting before? Just a couple of the rules of chamber. This chamber does everything we can, operation of this chamber is geared towards the free flow of diverse points of view, so there's no cheering, hooting, clapping, audible noise. If you like something that somebody says, you can do a thumbs up, and if you don't like what somebody says, you can do a thumbs down. If you are here lobbying on behalf of for-profit, nonprofit school, any other organization, if you're here to, if you're authorized to lobby on their behalf you need to disclose that under local law. If you want to sign up to testify, then you can approach our great council clerk, who can take your name. We call in order and the procedure of this particular hearing, given it's a land use hearing, is -- the process is ascribed by state law, and i'd ask the city attorney to describe for us the kind of hearing we're about to have.

**Linly Rees, Office of City Attorney:** This is an evidentiary hearing. It means you may submit new evidence to the council in support of your argument. We'll begin with a staff report by the bureau of development services staff for approximately 10 minutes. Following staff report, the city council will hear from interested persons in the following order. The appellant will go first and have 10 minutes to present their case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak. The principal opponent in this case the applicant l. Have 15 minutes to address council and rebut the appellant's presentation. After the principle opponent, the applicant, the council will hear from persons who oppose the appeal. That is, they support the application. Again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the applicant. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote the council will set a future date for the adoption of finding and a final vote on the appeal. If council takes a final vote today, that will conclude the matter before council. There's several guidelines for those testifying or addressing the council today. First, regarding submitting evidence into the record. Any letters or documents you wish to become part of this record should be given to the council clerk, Karla, after you testify. The only or a copy of any slides, photographs, drawings, maps, videos or other items you show to council during your testimony, including power point presentations, should be given to the council clerk to make sure they become part of the record. Second, testimony must be directed to approval criteria. Any testimony, arguments, and evidence you present must be directed toward applicable approval criteria, or other criteria in the city's comprehensive plan or zoning code that you believe apply to the decision. BDS staff will identify the criteria as part of their staff report. Third, issues must be raised with specificity. You must raise an issue clearly enough to give council and other parties an opportunity to respond to the issue. If you do not, you will be precluded from appealing to the land use board much appeals based on that issue. Fourth, the applicant must identify constitutional challenges to any conditions of approval. Additionally, if the applicant fails to raise constitutional or other issues relating to proposed conditions of approval,

July 13, 2011

with enough specificity to allow council to respond, the applicant will be precluded from bringing an action for damages in circuit court to challenge the condition of approval. And that concludes the process.

**Adams:** Next I will ask members of the city council if they wish to declare any conflict of interest, a potential conflict or an actual conflict of interest. Does anyone on Council have any conflicts to announce? Hearing none, if no council has a conflict of interest, i'll ask if any member of council has had any ex parte contacts to declare, or information gathered outside of this hearing process. Ex parte contact can include communication between a council member and a party to a quasi -- this quasi judicial proceeding about the substance of the proceeding that has taken place outside of this proceeding. Any ex parte conflicts or contacts I should say, that any member of council would like to declare?

**Leonard:** I've had multiple emails from both sides and phone calls from both sides.

**Fritz:** I have also, and I think they're all entered into the record.

**Adams:** I have as well, and they're in the book in front of me, and I reviewed them.

**Saltzman:** I've had emails, I don't think i've had any phone calls.

**Adams:** All right. Does any other member of the city council have any matter that needs to be discussed before we begin this hearing?

**Rees:** Mayor, before you do, one of the things you need to do with ex parte contacts, if anybody-- ask if there are any questions from the -- from anybody in the audience about those contacts.

**Adams:** Any challenges from anyone attending this hearing regarding conflicts of interest or ex parte contact declarations? Hearing none, we'll now move on to the hearing. We'll have staff, please come forward. Hi, how are you?

**Sheila Frugoli, Bureau of Development Services:** Wonderful. Thank you.

**Adams:** Good.

**Frugoli:** Good afternoon mayor Adams and council. I'm sheila Frugoli, the assigned planner for the bureau of development services. I'm here to present the hearings officer's decision and the appeal issues before you today.

**Fritz:** Sheila, could you move the mike over a little bit? Thank you.

**Frugoli:** The applicant, recology Oregon waste material recovery, is requesting conditional use approval for a new waste-related use. The applicant wishes to accept food waste at an existing recycling facility that is located on a large industrial site historically known as the freeway land property. The food waste will be delivered to the site primarily by garbage haulers who will collect the food waste from city residences who will dispose of their food waste in their yard debris containers. This will be a new curbside collection service. The applicant anticipates 35 garbage hauler trucks coming to the site daily, also mixed food waste will be accepted from private self-haulers as well as the general public. The waste will be offloaded inside an existing building and then sorted. The mixed food and yard debris waste will remain in the building for no more than 48 hours before it is transported via semi truck to a different site for composting. Also as part of this application the applicant is requesting an adjustment to waive the requirement that the waste-related use have access from a major city traffic street or a street that is within a designated freight district. This aerial photo shows the northern portion of the approximate 100-acre site. The green star identifies the building where recology will accept the mixed food and yard debris material. Recology will operate within a 6.2-acre ground lease area. This industrial site has access from southeast foster road from the southeast 101st avenue intersection. The access road crosses through private property, over the city-owned springwater corridor trail, and on to a private road which was southeast 100th avenue before being vacated. Johnson creek runs through the northern portion of the site near the spring water trail. East of the site you see the east lens floodplain restoration project, a city-owned 80-acre facility that will provide flood, storage, and natural habitat

July 13, 2011

benefits. This aerial photo shows the southern portion of the site. We see the i-205 interstate to the west, and the mount scott area to the south of southeast knapp street. The mount scott area is primarily developed with single-dwelling residences. There are some institutional uses on the hill, such as a small public park, church sites, and a residential group living treatment facility. There are also -- there is also a large multidwelling residential development located southwest of the site, south of mount scott boulevard. The freeway land site is within the eg-2 general employment, and the ih heavy industrial-base zones. Waste-related uses require conditional use approval in both those zones. The entire site is located within the Johnson creek basin plan district, portions of the site along johnson creek and its southern edge are within the environmental conservation and the environmental protection overlay zones. It is important to note that the recology facility is not located within the overlay zoned areas. The zoning and development pattern that surrounds the site is primarily residential. Specifically, the area north of the springwater corridor is zoned general employment in r2, a low-density multidwelling residential zone. To the east is the east lenses wetland restoration project. It is zoned r10 single dwelling residential, and open space. On the south side of southeast knap, the owner of the freeway land site also owns a 6.2-acre vacant site. It is residentially zoned. The lot is steeply sloped, forested, and has a creek running through it, and it is entirely within an environmental overlay zone. Finally, most of the mount scott residential area is zoned single dwelling residential. Concerns have been raised about potential --

**Adams:** Can I ask a question? How long -- roughly how long has this residential and industrial zoning been in place?

**Frugoli:** I couldn't tell you exactly. At least the last 40 years.

**Adams:** Thank you.

**Frugoli:** Concerns raised about potential flooding at or near the recology facility. This map identifies in light blue johnson creek designated floodway, the dark blue area is the designated 100-year floodplain, which is labeled the flood hazard area. The red line outlines the recology building. This map shows that the proposed waste-related use will be outside of the flood hazard area. Again, the recology facility is within a ground lease area. It is located approximately in the center of the freeway land site. The recology facility contains a large metal building, a small office, a weight station, an exterior storage and processing area, and a small exterior retail sales area where ground cover materials are displayed. Now I will show a few photos of the site and surrounding area. This is the large building where the blended food waste material will be offloaded for sorting and then stored temporarily. The recology facility is surrounded by a tall chain link fence. This photo shows again the building and the weight scale. Then looking northward, we see the weight scale the small portable office structure and parking for employees and visitors. This shows recology's exterior yard and wood debris disposal area or processing area. The applicant states that food waste will not be off loaded or stored in this outdoor area. This photo was taken near the southern gate of the facility, next to the interior road, which is identified as SE 100<sup>th</sup> avenue. We see other industrial uses on this site as well as the southern edge of the site. And then looking north on the right we see the tall fence defining the recology lease area, as well as numerous other industrial buildings located near the interior road. This industrial business is located across from the recology building. Here's a photo of the segment of johnson creek that runs through the site. On the aerial photo, the yellow arrow identifies the location of the bridge over the creek. Again, the green star identifies the location of the recology building. The creek is located approximately 800 feet from the recology facility. The green arrow identifies the industrial site's entrance from southeast 101st avenue. North of the entrance is the springwater corridor trail. You can see the painted pedestrian bicycle crossing and the stop sign.

**Fritz:** So there isn't a traffic light there.

July 13, 2011

**Frugoli:** No, not at the trail crossing, just a stop sign. This shows looking west part of that springwater corridor that passes near the site. Here we see residences located northwest of the site. These homes are located west of southeast 99th and south of southeast woodstock court. The homes are relatively close to the freeway land site but at least 1100 feet from the recology lease boundary. This photo was taken from southeast knapp which defines the southern edge of the industrial site. The locked gate prohibits access to the site from knapp street. The photo shows the elevation change from southeast knapp right of way to the industrial activities on the site. The green arrow identifies the approximate location of recology building on the industrial site. Near the locked gate, looking east, we see southeast knapp and the forested vacant site across from the freeway land property.

**Adams:** The freeway land, oriented. The freeway land is on the left or right?

**Frugoli:** The left-hand side of the photo.

**Adams:** Ok.

**Frugoli:** Yes. Again, the mount scott residential area is located above the site to the south. This photo was taken near the intersection of southeast la bell court and southeast 105th. As the crow flies this location is approximately 800 feet from the recology facility. The closest residential lot on the hill is located approximately 600 feet from the recology building. The hearings officer evaluated the proposal with conditional use approval criteria 33.815.202 a-i and the adjustment review criteria 33.805.040 a-f. The hearings officer considered the staff report and recommendations and the written comments submit into the record and the oral testimony offered at the hearing. The hearings officer determined that with conditions, the conditional use and adjustment approval criteria would be satisfied and, therefore, the proposal should be approved. Numerous conditions were imposed. The decision requires signs to be posted. It requires an aeration system and drainage collection system must be installed to address odor and keep liquids from escaping the confines of the building and information with a map and directions to guide customers to the southeast 101st entrance. And if it's ever reestablished, the recology related trucks are prohibited from using access from southeast knapp street. To specifically address concerns about raise -- raised about nuisance impact, a condition will require the applicant to lodge complaints -- lodge complaints and share a copy of the log with the lenses neighborhood association and the east Portland neighborhood office and within 24 hours, the applicant must give bds access to the site to review the log. Lastly, a condition will require the food waste material to be removed in the site within 48 hours. The appellants disagree with the hearings officer's decision. City council received a full appeal -- a copy of the full appeal statement. In summary, the appellants state that the decision is flawed because the application did not provide technical or expert evidence to show that the facility would not create offsite impacts such as odor, attraction of vectors, increased noise, dust, air and water pollution and, therefore, the potential environmental impacts were not adequately addressed. The appellants state a mitigation plan should have been submitted and state that the overall public benefit and potential impacts were not correctly considered. They believe that the applicant submitted traffic study was flawed. And they contend that the applicant should have provided evidence that -- excuse me, that the applicant should have provided evidence that there is not new capacity of existing waste transfer stations. Again, this is an aerial photo showing the site and surrounding development. I should note there are other city staff from bureau of environmental services, Portland transportation and the bureau of planning and sustainability in attendance. We're all available to answer questions you may have. This concludes my presentation.

**Adams:** Questions from council?

**Fritz:** Thank you, they was a very clear presentation. You said that one of the residences was 1100 feet from the facility. Is that the closest?

July 13, 2011

**Frugoli:** No, the -- one of the residential lots on mount scott is within -- as the crow flies within 600 feet of the recology facility. Some of the southern residential lots are closer than those on the north side of springwater corridor.

**Fritz:** O.K. and is there any evidence in of the record, anybody determined the prevailing winds?

**Frugoli:** No evidence in the record.

**Fritz:** That's a question i'll have for folks, then. And again, clarifying, is the property -- that part the property in the 100-year floodplain.

**Frugoli:** Part of the ownership is, yes, but not the recology lease area. But, yes, part of which is owned by jamison, yes, that site is within the 100 year floodplain.

**Fritz:** But this particular part of the facility is a foot above or more?

**Frugoli:** I don't know the elevation, but outside of the designated floodplain.

**Fritz:** O.K. And the regulations require that odors cannot be detected for more than 15 minutes in a day. Is that considered at one time or cumulatively over the course the day?

**Frugoli:** I believe the zoning says you can have modest odor detections but it would have to be continuous, yes.

**Fritz:** For 15 minutes.

**Frugoli:** Or more.

**Fritz:** Is there a mechanism to objectively measuring odor?

**Frugoli:** Not that I know of.

**Fritz:** O.K. I was wonder being that. And on the kittelson traffic impact study. Peak times over two days, is this an adequate amount of time for a study of this kind?

**Frugoli:** If I could, we might ask the transportation representative, robert haley to speak to that.

**Fritz:** That would be very helpful and my final question for you then is, was county vector control notified and have they commented on the issue?

**Frugoli:** We did not notify them and we did not receive anything into the record from the county vector control division.

**Fritz:** Thank you.

**Frugoli:** Thank you.

**Bob Haley, Bureau of Transportaion:** Bob haley with the bureau of transportation and your question was whether or not -- there was a claim made, two counts or two days' of counts was inadequate and, therefore, the study was invalid. In speaking with our traffic operations staff, there is no industry standard for the minimum amount of counts. There could be a problem if you took it on one day and it was a friday or monday, because it's atypical, but this was in the middle of the month on a tuesday and thursday and no holidays and nothing to make you conclude that these weren't typical counts for establishing a base set of traffic data.

**Fritz:** It's pretty normal for what you see in most applications?

**Haley:** Yes.

**Fritz:** Thank you.

**Saltzman:** So you showed us a picture of southeast knapp with I fence, so will -- you mentioned were that fence to be removed and the traffic -- truck traffic, i'm curious why is that fence there right now? To prevent traffic?

**Haley:** I'm assuming it's a security fence and that gate may be used for emergency access at times but it doesn't appear to be used on a regular basis. It's not really paved or graveled back there and the applicants were never intended to use knapp so they had no objection to the condition of approval prohibiting them.

**Saltzman:** So the entrance to the site would be from foster?

**Haley:** From 101st.

**Saltzman:** Foster to 101st.

July 13, 2011

**Haley:** Foster to 101st.

**Saltzman:** That's the only way?

**Haley:** Yeah.

**Adams:** We'll now hear our next presenter which is the appellant. Please come forward. Welcome to the city council. If you could introduce yourselves.

**Tom Rask:** Good afternoon, mayor Adams, members of council. I'm tom rask here on behalf of the appellants and along with mr. Lee kell to my right Mr. Dave Selugga, from Shaw Environmental, and Marty Sharp from our law firm. Today we have the appellants, mr. Frank fleck who is present. Mr. Gary gossett who is present and Ms. Gigi DuBose and Mr. steve Clayton of the Cottonwood Capital who are the property managers, owners of an apartment very near this project.

**Adams:** You're residential homeowners and representing the investor? Ok.

**Rask:** Briefly, you're going to hear in the balance of our time from mr. Kell who will explain and give a brief history of the garbage industry in Portland, why we have the rules we have and why metro can properly service this situation and then we'll turn the balance of our time over to mr. Dave Selugga who will analyze and explain the issues behind the nuisance, environmental and other concerns as to why this application should be denied.

**Lee Kell:** I'm lee kell, you i've been practicing law in Portland for over 40 years and I good part of it with the solid waste industry and watched the development and worked with the development of this industry from the '70s on up to today. The basic thrust has always been sanitation. From the time with containers to the water tight trucks to the sanitary landfills and transfer centers and material recovery centers to separate waste. The whole process has been developed in order to keep waste out of the city. Almost -- except for the central, metro central and the on areas, all of the transfer stations are outside of the city. As a matter of fact, all of our waste just disappears from this area. It goes up the columbia river and down to polk county, just leaves the area. This project brings the waste back into the city. Not only the waste but the putriceble waste to be dealt with. Metro has worked for years to develop the system we have now and they, right now, those -- the merfs and the private merfs around the area all have the capacity to handle this project. As a matter of fact, they can start it right now. We don't need to reopen this recology project over on foster to handle this waste, to transfer this compostable material to the composting plants. And that briefly is my point. It's all I wanted to say and i'll turn it over to david.

**Dave Selugga:** I'm dave Selugga, a senior project manager with Shaw Environmental, an environmental consultant firm here in Portland and I was asked by the opponents to review the technical and environmental aspects of the application and the way I like to do that is I like to start looking at the process flow. And trying to gauge a sense of material and waste flow rates through the system. Looking at the application I found it difficult -- or I found significantly insufficient material to make a real simple process flow diagram for this project. And the reason we're interested in the process flow, because liquids management is a being deal with this project. You're dealing with food waste by nature roughly 65%, 70% water. So the liquids management aspect of this project is very important. The other thing I wanted to look at is the nuisance mitigation plan. The city requirement -- the city requires a nuisance mitigation plan be put together for three particular impacts. One for potential offsite impacts, another for litter and finally vectors. I looked for a complete nuisance mitigation plan and did not find one. I was particularly interested in the odor and vector aspect of the project and again, did not find a mitigation plan. Going back to the liquids management, I want it talk about what the application did say. It said they were going to have a leachate collection system, a storage tank, a spring system, and then the potential of offsite disposal. Of course, looking at all of that, I wanted to look at it from a purely technical standpoint and look at flow rate and disposal rates. I found none. I didn't even find simple things like tank

July 13, 2011

size or collection system size. Pumps. None of the stuff that we would -- you would consider relevant in a technical evaluation. In addition, the leachate system is proposed to be subsurface. In our review of the area, the geological outlying area, we researched monitoring wells and geotechnical boring information for that area. And one of the things we found in that area was that shallow groundwater is roughly five feet. So if you're talking about putting this a leachate collection system below ground there's a definitely potential pathway in shallow groundwater for biological pathogens as well as additional chemicals that could create further odor problems for the site and given the fact that johnson creek is in the immediate vicinity there this could be a real problem if the system leaked underground. Finally, to conclude about leachate, we did not see anything in the operations area that would indicate how leachate is going to be presented being what's known as track out. This is where you're -- there they'll be dumping food solids and mixing and everything, but there will be liquids in the area and the liquids will stick to tires and tracked outside of the building and we saw nothing in the application that would deal with that and from a stormwater standpoint, you have the leachate commingling with the stormwater during the rainy season. Talking a little about odor, one of the things that the application said they were going to use biofilters to mitigate odors and when I look at the engineering drawings that were provided in the application there's an indication there will be four biofilters with a fan system. Again, general dimensions. A given depth of material that's going to be used for filter media, but the technical detail missing, air flow rates, pressure drop. Where was that information to determine how four biofilters were decided? So this was very difficult for me to make an ascertainment whether or not the system was adequate enough to remove odors when there was not enough technical information given in the original plan. And finally, in the matter of vectors, the application says that the sanitary conditions will be maintained inside of the facility. I don't understand what that means. That doesn't have a technical application to it. It just is sanitary conditions. So again, I saw nothing specific that would address on how vectors would be controlled, how vectors would be prevented from being brought in by trucks themselves. I saw nothing in there on how mosquitoes and standing water would be abated. Nothing on how birds and other flying creatures like that would be prevented from coming inside of the building. So again, the issues of vectors from a technical standpoint, I found no information that would indicate anything was being done to control vectors to that particular project. As a result of my request of the appellants for the technical review, I found the information at least from a technical perspective, to be wholly insufficient.

**Adams:** Thanks.

**Rask:** To follow up, a couple other matters i'd like raise before you all -- all of you today. First, there's been some debate about the number of loads that will actually be coming into the site. The applicant say 35-truckloads and less than 5% food waste. What the applicants failed to do was even look at the pilot program that was run by the city. What you'll find is it's not 3% food waste, it's 6% in a one month snapshot. 17% in another month snapshot and 20% in another month's snapshot. One breath, you'd say that's excellent effort on behalf the citizens to utilize the system we support. But the flip side, to think this is only going to be a little bit of food waste with a fair amount of yard debris is simply not the case. Our own evidence from the pilot program justifies otherwise. The other major issue is traffic. And with regard to that issue, the 35 load is simply not realistic. Haulers from the east side of Portland will make their effort to get to this site. When we did our own review, looking at 400 trips, not 35. It's just unrealistic to believe that 35 trips is adequate and in terms of the applicable code with regard to the major street usage versus the additional street usage, the applicants failed to meet the proper test of exceeding or better than standard which is required to find this variance.

**Adams:** I want to give you an opportunity. We are bound to interpret as you know state law in these matters and the art and craft of interpretation allows for some latitude but we're bound by

July 13, 2011

state law and the criteria -- latitude and we're bound by state law and I wanted to give you an opportunity to summarize where you think the three or a short list, this is intended to be a summary, not a soliloquy, where the proposal is a field of state law, specifically, which law?

**Rask:** Initially in terms of applying state law, you have to look at the city code as overlaid against state law and I would urge you to start there. In our brief, we outlined the related waste conditional review criteria the hearings officer was supposed to apply to this file. What you heard from Mr. Selugga is that it was substantially deficient in a number of criteria.

**Adams:** Again, I don't want you want you to repeat, I appreciate your testimony very much. Very eloquent, persuasive but I want to know, of what he said you think applies most directly to which local interpretation of state law.

**Rask:** With regard to the infestation problem, i'd point out there are significant health and safety issues that need to be considered. Environmental impacts, environmentally sensitive areas such as johnson creek and the watershed. Didn't address any potential nuisance impacts such as the litter and vectors, required to be considered under the conditional review criteria. The proposals don't address the regulatory issues regarding chapter 33.254 and waste related uses and most importantly in looking at it all, you have to balance the public benefits. In this case, the public benefits do not outweigh the detrimental impacts and they apply strictly to the code and state law.

**Adams:** Thank you very much.

**Fritz:** Is the report from the pilot project in the record?

**Rask:** I do not believe we attached that as exhibit. I'd be happy top submit it as additional information. We do refer to it and I think we obtained and i'll refer to our exhibit list.

\*\*\*\*\*: If you look at exhibit i, there's an spreadsheet of the pilot program and the waste generated from that program.

**Rask:** Thank you. I believe that's a summary. Correct, we've got the summary attached.

**Fritz:** I'll check that out i'm assuming your intention is because if it's up to 20% food scraps, rather than 3%, that would have more odor and potential for vector problems.

**Rask:** Absolutely.

**Adams:** Thank you very much for your presentation.

**Rask:** Thank you.

**Adams:** We'll move as described to the principle opponent. Sorry, you're right. How many people have signed up.

**Moore-Love:** We have 16.

**Adams:** Ok.

**Moore-Love:** The first three please come on up.

**Adams:** Welcome to the city council chambers. Glad you're here. Again, give us your first name, no address or phone number and if you're an authorized lobbyist on behalf of any organization.

**Steve Clayton:** Thank you, appreciate your time in considering this appeal. I'm steve clayton, an associate attorney with cottonwood capital management in this matter and the manager of Scott Mt. by the brook apartments, located .04-miles southwest of the proposed food and yard waste transfer station by Recology. Cottonwood has had an interest of assessing the impact of the proposed use since it came to our attention in late march in addition to the negative impacts already described, the proposed use would adversely, number one, affect the current enjoyment of scott mt.

Apartments by existing residents and too, adversely affect marketing of the project to potential tenants and three, it could result in a diminishment of value for the owners who we represent.

Following up on point number 1, introduction of the garbage dump in the vicinity of scott mt by the brook apartments would significantly diminish our current residents' enjoyment of the neighborhood. Renters pay a \$150-\$250 premium to live within the mount scott neighborhood because of open space and trees and terraced looks to downtown Portland and the neighborhood

July 13, 2011

east of 205 and south of johnson creek, including willamette national cemetery, brookside park and leach botanical gardens is a haven for professional seeking solace and retreat from their workday life in Portland. Adding a garbage waste transfer station in this vicinity should not be viewed as a compatible use. Two, our ability to collect premium rents would be hampered by waste station in our area and equate the property with lower housing west of 205. And once prospective residents get wind of food waste station next door it will be difficult to overcome the biases such an association presents. Third, the scott mt owners would experience a significant diminishment of the value in their investment, because of the leasing challenges presented, the increased vacancies and lowering of rents that would result from proximity to the waste station and the related nuisances of rodents and noise and traffic and other environmental impacts stated. For those reasons we ask that you accept our request to deny the proposed use. Thank you.

**Adams:** Thank you, sir. Hi, welcome.

**Gigi DuBose:** Hi.

**Adams:** If you could move one of those mics, that would be great.

**Gigi DuBose:** My name is gigi DuBose, i'm the manager of scott mountain by the brook apartments of Cottonwood Capital. And I -- I feel there's this is just a huge mistake. The environment there is so beautiful, it's all greenery, it's located below lincoln memorial and the national -- willamette national cemetery and it's beautiful. Now, it -- my concern is the toxic waste that's going to come through the water shelf or just, you know, directly into the creek, being only -- the -- a quarter mile -- or .04 from our property and the river runs through our property. It worries me about when it floods, it will get in the river, it will go to everybody's home, not just ours. And right now we have deer and we have red tail hawk and many, you know, forest creatures and they're all at risk. And if you look at some of their other facilities when they were norcal, and of course they regrouped and changed the name. They were indicted for bribery and they had many, many violations to the city laws in san bernardino and were actually forced out, \$6.6 million settlement so that part of the settlement they could not come back to san bernardino county for five years. Well, why would we want to bring a business with such tactics here in our hometown? They've been asked to leave not just california, they have many huge complaints and problems in nevada, I just don't feel it would be good for Portland, the neighborhood, or, you know, the world in general. I mean, earth. [laughter] put it somewhere else, outside, where there isn't beautiful trees that have been grown for years and there's people in their golden years that have built their life and their houses here and they're going to put the transfer station there. There's going to be the vectors and the rodents, the -- you know, the stuff coming -- you know flying off the trucks and waste.

**Adams:** How far is it from your investment?

**Clayton:** .04-miles.

**Adams:** How many feet?

**Clayton:** I don't know what that equates to.

**Adams:** Thank you for your testimony. Sir?

**Frank Fleck:** Good afternoon, i'm frank fleck. An appellant and president of springwater trail preservation society. In regard to sheila's staff report about the floodplain, the johnson creek floodplain understanding property is not in a floodplain, there's a creek coming down johnson creek -- not johnson creek, but mount scott that runs to where the gate is she showed you in the photo. The gate at the south end of the property. That creek's flooded across the street into the property a number of times. I've live there had for 40 years and there's a number of times it's flooded and made the street impassable.

**Adams:** What's the name the creek?

July 13, 2011

**Fleck:** It doesn't have a name. But my neighbors and I are concerned about the stench from the rotting food and meat and it's a huge concern for my neighbors, my family and the community. It will negatively impact the liveability, lower property values and deter businesses from lens and I'm concerned about the odors and flies, rats and disease carrying vermin that carry a real health risk. They say they're going to remove the waste in 24-48 hours. Well, I worked for 35 years in management of manufacturing. And manufacturing is simply input, there's a process and there's outputs. But this is not as simple as first in, first out. It's not packaged product that's going to be out in 48 hours. It's not in one door and out the other. Rather, it's bulk garbage, rotten Fish and meat and dairy and other rotten food, including liquids. Some of which from residential homes and restaurants and will be hauled to this property. It's solids and liquids that will be mixed on the floor in a building, the waste mix will be pushed to the push walls and around the buildings and the part at the -- in the walls around the building isn't going to be out in 48 hours. It's not like they're going to empty the building every 48 hours and wash it down and start over. There's going to be leachate in the floors and drains that's going to be there for much longer. I'm surprised and disappointed that recology did not engage the lens neighborhood association or the neighborhood and get an agreement. On june 28th, the lens neighborhood association voted to oppose the recology operation based on odor, vectors, traffic, flooding, and recology's track record and lens' image. Multnomah county commissioner judy shiprak, district 3, in which lens is a part of, opposes the issuance of a permit and wrote a letter stating that please do not approve the permit. There's other viable sites able to handle this type of waste. Senator rod monroe also wrote a letter to council to oppose it. If it was proposed for eastmoreland, no. Westhills, no. Dunthorpe, no. In lens, we also say no. Judy shiprak said no, and the lens neighborhood said no and rod Monroe said no. This is a big thing for business and reputation and image and the people of lens have been working hard to build and reorganize and reimagine lens, there are other viable sites that are ready to handle this product. Thank you.

**Adams:** Thank you very much. Thank you all, appreciate your testimony. Next three.

**Adams:** Hi, welcome to city council. Glad you're here.

**Debra Fleck:** Hi, i'm deborah fleck. I'm a resident in the neighborhood and I strongly oppose this site. It's going to be a big detriment to our neighborhood and community. The odors, the noise, the pollution from the garbage trucks is not healthy and especially it's not healthy for the kids playing in the new play haven park you just recently built. Metro has viable sites already that can handle this, so I urge you please don't put it at this site. Thank you.

**Adams:** Thank you.

**Kathleen Gossett:** My name is kathleen gossett and my family lived in lens since the 1920s, the site we're discussing used to be a lumber mill that I walked through as a child and trucks coming back and forth so i'm real familiar with the site. I've lived all over the world and many different states but I came back and lived and bought a home in lens. I appreciate all the work that they've done to try to revitalize the neighborhood and they're good people. And we don't need this here. I beg of you, please reconsider it. Because it will do just what she says. Does mcfarland ring a bell? You can smell their operation clear to 82nd from where they're located and that's just wood compost and debris. And I know they're not -- that's not -- it's been outside, but the stench is unbelievable. And once it gets in there, how do we get it out? You know, we've got to fill out a log sheet like they say and try and contact somebody. Let's just avoid the problem and not have it.

**Adams:** Thanks for your testimony.

**K. Gossett:** Thank you.

**Adams:** Sir?

**Gary Gossett:** Hello, i'm gary gossett. Secretary of the spring water -- whatever, all of that stuff. Committee. [laughter]

July 13, 2011

**Adams:** Sounds very important.

**G. Gossett:** Yeah, very important. Basically you have people who live nearby are scared. But I don't need to say the same things that everybody else has said. You guys have all been working hard over the years trying to make Portland a better place, more transparent. A place we can all be proud to live. Well, the kind of people that we deal with, the companies that we bring in are a big issue, a big part of what our quality of life is going to be. And you've heard about recology's and norcal's history and all of that. Norcal they've have troubled in the past and maybe they are better now. But I'm not certain that's true. I always figure, give a company another chance. After the lenses neighborhood association, I went and talked to mr. Dutra. The guy that's running this thing. And many of his staff, because I wanted more information. I wanted to find out what was true, not just what was being proposed or said on one side or the other. And the -- they seemed to be upright, great people. And promised me they would get back to me with the information showing their side of this whole thing, and about a plant that's in Washington state, that is using a lot of the same technology they're proposing to put in at this place. That's what I needed to know.

Unfortunately, they've never got back to me, and that's telling. It means you've got somebody who is -- who is willing to make a promise to you and then not follow up on it. That's why i'm urging you not to let this thing happen here. Thank you.

**Adams:** Thank you, sir. Thank you all very much. Appreciate it. Next three.

**Peter Arbuzov:** Probably I signed the wrong paper. In just a few minutes to walk to that site [inaudible] so we're going to live in the center of a sewer. It's an inhuman action in our opinion because a family of three. I'd like to ask you to do everything possible to stop this building. Because it was 10 years ago, more than 10 years ago, we bought this house. It was nice, and we were glad because of springwater corridor, powell butte. But more and more, [inaudible] going to be -- things are going to be worse, of worse. I'm responsible for [inaudible] every building. And how is the danger, even human touch -- even [inaudible] deadly for humans. People should know more information what this danger about this future. It's inhuman.

**Adams:** Thank you very much for your testimony. Appreciate it. Ma'am?

**Katherine Sheehan:** Katherine Sheehan, 109th avenue. I'm up hill and upwind from the proposed facility. I've recently located here from upstate new york and before I purchased the property, I had my children do some checking on the area and they frequently ride the springwater trail and never detected any odors or anything coming from the facility that's there already so that's why I went ahead with purchasing the property and taking it off the foreclosure rolls for Portland. In rochester, there was a meat processing plant approximately two miles or 10,400 feet from interstate 590 and the smell carried that far from the meat rendering plant and the smell was -- excuse my expression -- enough to gag a maggot and I assume that the kind of smell will be emanating from this facility, despite recology's claims to the contrary. I believe this operation belongs far away from any urban area. Not just the lenses area but far away from any urban area. And my final comment with all due respect, wondering if the city is prepared for the influx of requests to grieve their assessments because if this facility is approved, our values will immediately drop. I personally will get an appraisal of my property before it goes in and after it comes in and i'm sure there's going to be an enormous difference and I would urge my neighbors to get appraisals too. Thank you for your time. **Fritz:** You mentioned you're upwind. What are the prevailing winds in the area?

**Sheehan:** I haven't been there long enough to figure it out.

**Adams:** Thank you.

**Paul L. Dieter:** My name is paul dieter. I live in the lenses neighborhood. I'm a life long Oregonian and would like to start with words of a former governor, let's not californicate Oregon. I don't think we need to go to California to find a company to process our waste. Their track record

July 13, 2011

is not good, they're deceitful and not trustworthy. I don't see why we can't find someone in our own backyard if we have to perpetuate the garbage transfer. It's going to happen in Portland regardless whether this one opens or not. We're aware of that. Why open a festering wound in this project. We've been told by the experts that this compost thing is going to happen. And whether this particular place is opened or not, I also live downwind and I know where the wind comes from and it comes from the east. I live on 86th, the wind buffets the back of my house on a regular basis. I've lived in lenses all my adult life. And I see the traffic patterns they're showing and this back gate they say that will never be open, comes with the same adage that the arabs have. You don't want the camel in the tent, don't let its nose under it. I appreciate your time. Thank you.

**Adams:** Thank you for your testimony, thank you all. Appreciate it. Mr. Endicott.

**Bill Endicott:** Hi, how are you. I live on 103rd and leadway. The house I live in now I bought from my parents and so, I've lived in the neighborhood all my life and I know what a lot of heavy traffic can do and i've got dump trucks coming up and down my street. There's a business end of the street that -- jay roth or something like that. There's dump trucks that go up and down the street 24 hours a day seven days a week. I know there's going to be an impact, it's going to disrupt the neighborhood. It's not so much the traffic situation as it is the environmental. I think the environmental impact is -- is where we're -- really, we're -- where you should focus on that more than the traffic. I know the traffic is not good. It's disrupted my life but I think it's the environmental. And the gentleman over here talking about -- hi there -- made a lot of sense. We're talking the waste, the liquid, the driving in and out. And that's something that, you know, you're just going to have to, you know, it's a big decision and somebody is right and somebody is wrong. So I think this is not a good plan.

**Adams:** Thank you, sir. Hi, welcome.

**Joe Papasodero:** Hi. My name is joe papasodero. I think this is a real bad thing going on. My family's been in the drop box business for 50 years and I know what the dumps and the transfer stations and everything look like and smell like. And I do not want my backyard to smell like a dump. I've got a beggars tick wetland behind my property. When it floods, they can't tell me that this facility isn't in a flood zone because it is. And when it floods it goes right into beggar's tick wildlife area and it's full of garbage. And i've been out there pulling garbage out of there and it's full of wet waterfowl all year-round. When it dries up, late august, they take off, and you should see the garbage out there. So i've been to the -- to metro central transfer station and seen the holes in the wall and stuff like that. I know exactly what's going on. Stuff leaks out. Gets out. There's no way to stop it. I've got that wetland, the mosquitoes are really bad. What are you going to do when this gets out of hand, because they say they don't have enough money to come out and take care of the mosquito problem. The city, metro, whoever owns that. So, I mean, when this gets out of hand and you've got leakage and stuff, going into the beggar's tick and johnson creek, and then are you guys going to sit there and say you don't have the funds to clean the mess up? I've got to clean up my backyard from when it floods and then that stuff goes into the wetland and right into my yard and I don't want any more cleaning up.

**Adams:** Thank you.

**Rose Causey:** My name is rose causey, i've been a resident in my area for 31 years, i'm a registered nurse and i'm concern about the vectors that will be coming from the rotting meat and the food. It will attract flies, raccoons, rats and mice, the cdc website has a list of diseases that's rodents carry and I brought that with me and includes hantavirus, hemorrhagic fever [others]. Plague, rat bite fever, and many diseases you on the have to smell the dust. Get a whiff of the dust and you're sick. Mice and rats can creep into any little tiny crevice, a half inch in a building to get into the garbage there. And rats and mice reproduce at a fast rate. 200 rats can be reproduced by one female in a short amount of time. There's already a small rat problem in the area. I live

July 13, 2011

between knapp street and mount scott off 101st and lexington. The winds prevail from the east and swing around the mountain and come right toward our property. We would be smelling the smell that you smell when you on your yard debris can after things have been setting there for a week. The same smell that you smell at mcfarganan's in Milwaukie. I'm also concerned about the increased traffic. We hear a lot of noise from i-205 and the max station already. We would be hearing the beep, beep, beep, from the trucks as they pull into the building and back up to dump their load. So as you see, I don't think this facility belongs within the city limits of Portland. Anywhere. I pride Portland on their recycling programs and I think we're one of the best in the west. And I want to keep it clean and sanitary. I don't want my backyard ruined when I go outside. I want to be able to open my windows and smell the fresh air and that's what I have to say. Please, mayor Adams and everybody else, please hear us. This is -- we're you're people. We're not from california, we're your people. Thank you.

**Adams:** You are our people and thank you for your testimony. Appreciate it very much.

**Adams:** What were the three names? Ms. Murray.

**Tiffany Murray:** I live on 11 -- 101st one block north of foster and occasionally I have the smells from the facility. I wasn't notified until yesterday I found out about this, so most of my neighbors don't know what's going on with the plans over there. And I think they could do a better job of notifying and we have trucks coming into the facility and get lost and turn left on 101st instead of right and jackknife in the road and there's problems with the telephone wires and they're too big to get through the neighborhood and there's no where for them to turn around and that happens in front of my house, i'm just across the street. And it floods, every winter. And I think they've overdeveloped the area and I think they've broken laws already and encroached on wetlands and that's why it floods all around them. They built it up and paved it. I hope you say no to their plans.

**Adams:** Appreciate your testimony.

**Tony Bonillo:** I'm tony, I live in the area and I wanted to voice my concern. As far as odor, will any odorous materials be kept outside of the facility that recology say will be outfitted with an air filter. Environmental contamination. What safeguards are going to be put in place to ensure that the water and wildlife on and surrounding the recology site are not natively impacted by waste and contaminants and what additional policing by agencies would recology be willing to allow responsibility for inspecting and reporting the steps taken to avoid the strain to the area's green spaces. As far as liveability, the area south of the proposed site along southeast knapp is lush with water courses and wildlife, such as deer and birds, wood peckers and hummingbirds and it's a safe place for these animals and a scenic green space ambiance for our neighborhood. No one wants to look out and see a dump as they drive by. What assurance can recology give that this area will be preserved from the noise, smell and sight of a high traffic waste dump? Public safety, the springwater corridor passes directly through the access road at southeast 101st. What steps will be taken to make sure that bicycles and walkers will be kept from harm from the multitude of trucks passing in and out of the site. SE Knapp st is an area often utilized by walkers, commuters and bicyclists. And there's no sidewalk along this road. If recology decided to use the southeast knapp street entrance, how will pedestrians stay safe when this is one of the few roads leading directly to the max station. So with regard to the environmental impacts, the only way I can see these problems will be addressed is if recology is willing to voluntarily hire an independent agency or periodically inspect and maintain a higher level of compliance that might otherwise be dictated by the city or county and in addition a signal should be installed at se 101<sup>st</sup> where the corridor pathway passes over because I think that would help safety somewhat. Thank you.

**Adams:** The springwater corridor trail?

**Bonillo:** Yeah.

July 13, 2011

**Adams:** Thank you very much for your testimony. We'll hear from the opponents of the -- the principle opponents.

**Michael Robinson:** Before we begin -- [inaudible]

**Adams:** I can't hear you. You have to sit down and introduce yourself.

**Robinson:** Michael robinson, on behalf of recology. Before we begin, we have an easel we'd like to put up so we can show you exhibits. Where would you like the easel?

**Adams:** Right in front of the city attorney -- thread the needle, if you could, between the city attorney and the crowd.

**Robinson:** And I have exhibits we'll be referring to. Would you like me to hand them to your clerk?

**Adams:** That would be great.

**Robinson:** Thank you.

**Adams:** So because we're here late in the day, we're going to take a five-minute compassion break so you can get organized. Bathrooms are on either end of the building. We'll reconvene at 4:34. [gavel pounded] We're in recess. [break]

At 4:28 p.m., Council recessed.

At 4:34 p.m., Council reconvened.

**Adams:** Oh, we have one more minute, sorry.

**Adams:** It is 4:34. All right, we are back from recess. [gavel pounded] quorum is present. And it's your choice to wait for commissioner Saltzman or we can proceed we are ready to go.

**Michael Robinson:** My choice is to go. Good afternoon, my name is michael robinson, on behalf of recology. To my left is dave dutra. We'll let dave start first and i'll finish up.

**Dave Dutra:** Thank you Mr. Mayor and commissioners. I'm happy to introduce to you today, the project as well as the company or the applicant. Recology is an integrated materials management company established in the late 1920s. Specifically in Oregon, we operate a number of refuse collection companies, recycling facilities and material recovery facilities, three composting operations and we're the operator of the metro central transfer facility and in california we have a large number of holdings that are similar in operations. Including residual landfill operations. I'd like to start today by focusing on some of the heights which will help provide you with additional information and how we plan to further ensure that we do not negatively impact on the neighbors who are so passionate about their communities and rightly so. We've provided to you six sheets of 30 sheets made available to the hearings officer that shows the elevation, both the north and south side of the building. That's the entire building which consists of 75,000 square feet of which we lease 40,000 square feet of it. The second page labeled c1.1, identifies what portion of the 40,000 square feet we're going to utilize as a tipping floor. To receive the loads. And again, the loads coming this are primarily commercial, residential, collection trucks consisting of between eight and 10-tons per truckload and the material presently today does not include type three organic or food waste material and it's received outside of the building presently, as the photos showed you earlier. The area that is designed to receive the material is an improved floor surface with perforated piping throughout the floor so that the floor is perforated and the negative air system pulls air, the ambient air within the building and outside of the building through the material into piping and then exhausts that through the floor biofilters and i'll explain more. This drawing shows the location of the biofilters outside, on the south side and as well as the tipping pad. The second page, p1.12, is a little bit closer detail of the tipping floor, giving you a sense of how many perforations are allowed for within the floor to pull moisture, as well as the -- as the odor, not odor, the air through the material, keeping it aerobic. And preventing it from becoming anaerobic which may in

July 13, 2011

fact, generate odors. Page p402 shows details of the floor, again, as well as the push wall. I'd like to point out that the floor, the entire floor is also curbed so there's a slight curb that the trucks drive over and tip on the floor and drive off the floor and out of the building, we expect only the duries of the truck will drive onto the floor, the tailgate is lifted and the material is extruded onto the floor and the truck drives off. We don't expect mud to be tracked or suspended solids to be tracked out of the building and we have capabilities of washing the floor. The floor consisting of an area 40-by-40 will dictate much of the volume that the facility will receive. You simply can't put 400-truckloads of material on to a floor that's 1600 square feet. The material will come in, it will be pushed up against the retain -- the retention wall, and as we generate a semitruck-load, it will be loaded and hauled off site. Initially we expect three to four trucks hauled offsite with the material.

The page m --

**Adams:** Per day.

**Dutra:** Sorry, per day. Per operating day. Correct. So the traffic study that indicated 35 trucks, that's really a maximum designed capacity at the facility. We would be limited to that. We cannot exceed it by permit and we would be held to standards specific to controlling that amount of material. If we were, in fact, to receive that. However, if we were, that's assuming no other facilities within the city limits are operating for receiving this type of material which is highly unlikely.

**Saltzman:** You say permit, which are you referring to?

**Dutra:** Both the deq permit as well as the metro permit which has oversight and enforcement capabilities over the facility would hold us to those standards. And so again, we have a deq permit, we have a metro license, and then we have also, oversight by the city health department. Page m402.02, shows the configuration of the fan system and how it ties into the biofilter, the biofilter is a sealed steel container roughly 22-by-4-4. Or I think that's -- in terms of cubic footage, 640 cubic feet. There are four of them. It is filled with woodchips. Those are the woodchips kept moist and as the air flows through, the volatile -- the volatiles are removed from within the woodchips and what is exhausted is about 98% free of any pocs or volatile organisms that generate odor. I'd like to point out in our design of the facility, this type of technology is typically used in enclosed operations for full composting operations. We're not composting here. We're receiving residential and commercial yard debris and pre and post-consumer food waste. It's blended and immediately removed. There's no obligation or sense of us to keep on the floor for any given time. As soon as we have a truckload, we want it out of the building. The reason I point out this technology is unique to this type of operation, again, it's used for composting operations. We operate a reload facility for the city of san francisco, 500-tons a day, it does not include this type of negative aeration and biofilters and we also receive and generate for composting source separate the food waste flew the metro transfer facility, and the floor there does not have a negative aeration system or leachate collection system. The material, the yard debris and the food waste absorbs itself and does not generate large volumes of leachate which is alleged and we are currently doing 18,000-tons a year at that facility. With homes in very close proximity. We've operated it since april without any complaints or notices of violations and that's receiving, again, commercial source separated source.

**Fritz:** Where is that?

**Dutra:** Northwest, the city of reno, 6160 61st avenue.

**Adams:** I don't want to break your -

**Saltzman:** Portland, not reno.

**Dutra:** What did I say?

**Saltzman:** It's in Portland.

**Dutra:** Thank you for correcting me. I don't know where that came from.

July 13, 2011

**Leonard:** Reno.

**Adams:** Can I ask a question unless you're going to answer it later. To get a sense of how you operate. The trucks come -- on c1.1 -- and so the trucks pull in where? And

**Dutra:** The trucks pull in on the south side of the building through one of three doors that have -- that are roll-up doors, would be closed and sealed off at night. The trucks will back into the facility, back on to the floor, tip and then leave through the same door.

**Adams:** So they back -- ok.

**Fritz:** How does the material get pushed into one place?

**Dutra:** We have loader equipment on-site. There will be a loader assigned to the tipping floor and push it up against the push wall and from there, top loaded onto a semitruck. And we're currently doing that now. It's just we're doing it all outside with type one organic or yard debris material.

**Fritz:** Like a bill bulldozer or something?

**Dutra:** A loader, yeah. A wheeled loader.

**Adams:** Ok.

**Dutra:** So I discussed a little bit about the technology. We -- as I pointed out, we have about 30 sheets of technical drawings and descriptions of the equipment. It's not typical to fully engineer and fully design it until the land use has been approved within we know we've got a real project that we'll submit to the city for approval for construction. So they are -- they are specific to the air system and general to the site configuration. I think i've adequately addressed thoughts regarding the leachate. Stormwater, again, it's indoors --

**Adams:** Just so -- sorry.

**Dutra:** No, that's ok.

**Adams:** So i'm clear, the liquid. There's concerns expressed about the adequacy of the containment and processing of that and the possibility of it leaking into the river or into the groundwater.

**Dutra:** Yeah, ok, so we have a new concrete floor which is fully curbed as well as the perforated pipes that will collect any liquids should they be generated--

**Adams:** By curved you mean like a basin?

**Dutra:** Correct, it will be rolled so that the trucks can roll over it and enter onto the floor. The design of the system allows for any liquids collected to fall into a very small sump area within the floor and within the building. There's a pump within sump that pumps in into a small 250 gallon tank, when that tank is full, it's pumped into a collection vehicle and processed offsite. 250-gallons is not a lot of capacity. Our experience it ranges between 250, worse case 500. As I mentioned right now, we're doing 18,000 commercial food waste at metro central station without any controls and not finding leachate on the floor to the extent we have to manage it, other than soaking it up yard debris.

**Fritz:** How far is it from the metro facility to the nearest residence?

**Dutra:** I'm going to guess 600 feet.

**Fritz:** Where is the location?

**Dutra:** Yeon road, highway 30 heading to scappoose off 61st avenue.

**Robinson:** You're talking about the single family homes on the south side of u.s. 30 up the ridge?

**Dutra:** Correct. The facility has been there for many, many years, we've operated it for a year and a half now with this food waste without complaint or this is a violation or -- or concern. And metro as well as deq inspects the facility monthly.

**Adams:** How -- I mean, how -- the concern is that there could be leaks in that system and not know about it. How can you assure us that there wouldn't be leaks or if leaks occur, they would be detected?

July 13, 2011

**Dutra:** Well, it's a sealed tank that will be essentially in the concrete floor. It's a small collection basin or drain inlet. I think that ongoing monitoring or sealing of the tank will ensure that the tank itself will not leak. The ag tank the material is pumped into and stored for a longer period of time is above ground. That's simply a plastic ag tank. As far as the piping, we're not anticipating leaks, again, it's designed to flow, so it's -- liquids won't stay there for any length of time. It will go through the piping and under air pressure and into the drain inlet tank.

**Fritz:** How often do you plan to wash out the concrete basin?

**Dutra:** Best management practices will dictate that. It may be on a weekly basis, it maybe on a daily basis, depending on the seasonality and the ratio of food to yard debris. Simply how -- how -- how the material comes in. At this point, right now, at metro central station, again we're finding that the yard debris we're mixing with the food waste is sufficient enough to keep the floor clean and imagine the odors.

**Fritz:** You don't have a concrete floor there?

**Dutra:** We do. It's solid concrete it. It does not have perforated holes. There's no forced air or biofilters.

**Fritz:** With the ag tank, holds the water that is used to wash the floor as well?

**Dutra:** It would yes. Everything will go into the perforated --

**Fritz:** Is all of the information you gave us in the record?

**Robinson:** It is now. Several of the sheets were before the bds staff prior to the preparation of the report and several before the hearings officer at the hearing.

**Fritz:** And there's more you added today.

**Robinson:** Yes, ma'am. I'm sorry -- I was going to add the reason we've added more today is exactly as dave said. Once you have the land use approval you begin spending the money to actually do the construction drawings and that's what you're seeing today. I was going to add if I could quickly. The testimony that mr. Dutra is giving you today was before the hearings officer, so the oral testimony generally is -- has been available since the hearing in april.

**Fritz:** Right, my concern is the appellant talked about not having the information that their expert could tell it's going to work.

**Robinson:** That's an interesting question. I called Mr. Rask twice. I sent an email and got no response. We reached out as soon as we found the appeal was filed. We reached out three times. We wanted to share information and find out what the concerns were and happy to meet with him. We got no response at all. I saw his assistant on the tv yesterday saying that the information was not in the file. The drawings may not have been in the file but mr. Dutra's testimony was given to the hearings officer and none of those folks were present at the hearing. The minute we found about the appeal, we reached out and wanted to be proactive and talk but we got no response.

**Dutra:** I might add a couple of things, under the best management practices, it depends on the seasonality, and the amount of food waste, food waste and the ratio to yard debris. Because we generate 10,000-tons of biomass fuel on the site. We ship urban wood waste down to 3 inch minus-- we can actually add that as a top or biofilter cover right over the term at the end the night, essentially burying any food waste or yard debris that comes in that would be a deterrent to vectors and we can hire and have hired rodent control. As you know, the facility right now, operates as a solid dry waste material recovery facility so we have an ongoing program there for vector control. They -- they can indicate to us whether or not an additional measure like that is necessary.

Whether or not we're generating vectors. As far as noise impact, the operation, we're not adding any additional equipment. In fact, we're take can the existing operation and moving it inside the building so we do not anticipate any additional noise. In fact, we anticipate reducing some of our noise. I think that i've covered all of the points that I have.

**Robinson:** Thank you, dave. Mr. Mayor, unless you have other questions, i'll proceed.

July 13, 2011

**Adams:** Can I ask a couple of follow questions? You're subject to regular health inspections by the county, which is also if -- is that done on a -- what's the regime or protocol they use for that? Is it surprise visits like restaurants or regular surprise visits? How is that done?

**Dutra:** My understanding specifically the county, it would be on a complaint basis. However, deq and metro do both surprise and scheduled inspections on a monthly basis. We have indicated to all parties that we're willing to enter into a good neighbor agreement. That agreement will include how we not only report having received a complaint, but what actions we'll take immediately following the complaint. In this particular case, of course, there's a complaint of odors, the simplest thing we can do is ensure that the material is removed immediately and we'll do that. But again, in our experience, operating facilities like this, because of the throughput capacity and the time the material stays on the floor, odors are not an issue. They're not an issue at metro central where the ratio of food to yard is much higher. Up to 50% food waste to yard debris. They're not an issue in san francisco where we operate a similar operation with higher ratios and significantly more volume.

**Adams:** Have any of your operations ever -- there was testimony expressing concern about dust and bugs or -- or rodents that carry diseases. Has anyone at your -- working for you, anyone -- any neighbor living nearby ever contracted a disease?

**Dutra:** No. And we have not only transfer reload facilities but also composting operations which are currently receiving food waste and composting and again, the trick is all in how you manage the product. Or the feedstock and making sure that you've got the proper practices in place to control those vectors.

**Adams:** And then, questions were raised about the integrity of the company. Bribery and those things. I want to hear your side of the story.

**Dutra:** Recology is a company that ranks seventh largest, I believe, in the nation, but 100% employee-owned. We have 2700 employees. And i'm going -- I couldn't tell you how many operating sites. It's very difficult in the industry to operate from the 1920s to present day without incurring some problems. I think what's important is look at our track record here in Oregon with the facilities we have and the -- and that are operating this Oregon. We -- to my knowledge, have no notices of violations in the years we've been here and operating. We respond very quickly to any complaints. And I think overall, the municipalities would indicate we're a good, responsive -- good, responsible operator.

**Robinson:** If I may quickly, I heard those comments and i'm going to ask council to leave the record open. We have a big packet of materials we haven't had a chance to review. And we want to answer your questions as well as the things we've heard our neighbors say. But I will say, I stand by this come. I do not represent criminals and I want to look very carefully what they put in their materials and we'll give you a response to each item. This company would not have the contracts it is has in this state, as clean as this state is, if there were a problem with this company. I stand by this company.

**Fritz:** Thank you.

**Adams:** One last question: Flooding. So commissioner Saltzman and I traded off over the years, reducing flooding with the johnson creek floodplain but it still floods. Hopefully it will reduce flooding, but we're not guaranteeing it will eliminate all flooding. The concerns about the potential flooding, it's out of the flood zone from what I tell from the map, but let's say it goes above that, what happens? What do you do?

**Dutra:** We've got a facility located above a 100-year floodplain, as a business owner, we're willing to take the risk but in the event it were to exceed that, we would certainly respond immediately. Taking controls to ensure that the material is cleaned. We don't anticipate garbage. It's a mixed dry waste facility presently. We don't experience or have any complaints of migrating

July 13, 2011

garbage from the site presently. The yard debris organics and food waste does not contain garbage that we would anticipate floating down the rivers or migrating from the site. And I think the property owner will testify that we are part of a program, we regularly police the roads going in and out of the facility collecting trash.

**Adams:** Thank you, sir.

**Robinson:** Please go ahead.

**Fritz:** I really appreciate your offer to keep the record open. Sometimes it takes coming to council before both sides know what's on the table and start talking with each other. I greatly appreciate that. And then I also heard and saw the letter about the good neighbor agreement. I'm taking it you're amenable to a condition of approval requiring a good neighbor agreement?

**Robinson:** Yes, we entered into one with the st. John's neighborhood association subtle road facility and happy to do it with the lents group as well.

**Fritz:** I think a little extra time for the neighbors to talk to folks in st johns to find out what their experience has been like. I'd like to have that information.

**Robinson:** Thank you. We'd be happy to have that in the record.

**Fritz:** And my final question, the reversing of the trucks, with the tipping, is that different from the way they do it right now?

**Dutra:** No, the trucks containing dry solid waste for sorting, currently back into the facility and drive out the same door.

**Fritz:** Ok. That's just more of them, is -- so from the neighbors, i'd like to hear from you whether you can currently hear the beep beep beeping. And I know some folks have to leave and I appreciate everybody coming during the day to the hearing, we sometimes schedule them in the evening so more neighbors can participate. But if you can let your neighbors know that the record is held open for more comments. I'd really appreciate that.

**Dutra:** We do have a traffic study and there might be some concern differentiating between the other heavy uses on the property now. It's -- there's a cement facility plant on-site as well as an asphalt plant on-site. And a number of other heavy industrial uses that all rely on backup alarms and things like that.

**Fritz:** Is your proposal to add to this facility or are you going to take away any other recycling products?

**Dutra:** What we're adding is only the component of the type three organic material.

**Leonard:** I do note you have 3 minutes and 20 seconds left. I've been waiting -- I have a series of questions to ask. So i'm hoping you can finish your thought. I don't want to jump on board with the questions currently being asked.

**Robinson:** May I answer quickly your flood question without causing commissioner Leonard more consternation. I have testimony about actual approval criteria and I might if I might have two extra minutes.

**Adams:** Yeah, we've asked you questions, so --

**Robinson:** Let me answer quickly to add to dave's facts on flooding. The hearings officer noted we're 800 feet away you can see from the map from the e-zones around johnson creek. We don't believe the site is susceptible to flooding but we all know things happen. We would accept a flood mitigation plan in effect. We have a nuisance mitigation plan. That was something bds looked at and the hearings officer looked at so we'll add that. I'll try and -- a couple of extra minutes. Try and do it in five minutes.

**Leonard:** To be clear, your 3:20 was frozen for some time.

**Adams:** I'm giving you more time because I asked a bunch of questions.

**Robinson:** Thank you, mr. Mayor. I'll get to those in a minute. First, I wanted the record to remain on if the council would grant that, I was suggesting one week for all parties to submit

July 13, 2011

argument evidence and one week for parties to rebut and we have waved the 120-day clock. And it was testified that we're proposing it's not like leachate in the ground. That's not the case. Your bes -- sorry, bds, looked at our plan and agreed with how we proposed to collect leachate and treat stormwater. Thirdly, I want to respond to the exhibit 1 page 6 that the opponents referenced. This is the graph they are talking about. Here's what they didn't say, this is text at the bottom of the graph. The trips generated in pilot areas would not be representative of trips generated citywide, because the pilot routes are smaller than a typical yard debris route. Thus an extrapolation of trips citywide based on the pilot trips would be a gross misrepresentation. End quote. We stand by our argument and the hearings officer agreed with us, that generally only about 5% compostable food waste is a small percentage, and mixed with yard debris as dave said, not larger than that. Let me turn to the approval criteria which you did not hear mentioned in the opponents testimony. First of all with respect to odor, I think the reason Dave explained to the extent that he did is we're not going to have a wind tunnel affect and the negative aeration floor is not going to be affected by strong winds. Plus the hearings officer conditioned us to move that waste out within 48 hours. And as Dave said, there's no reason to leave it in there. Leaving it in there costs money. We want to get it out, that's what we will do. The leachate is controlled. We think the system works, BES looked at it and agreed with it, Storm water is taken care of, BES looked at that as well. We don't believe the site would flood but, we will accept a reasonable condition of approval that deals with that eventuality. We believe nuisance control and vector control will be taken care of. You only have problems if you have nesting, water source and food source. You're not going to have that here. The materials going to be moved out. We've committed to having a clean site. And one of the conditions allows BES to come on site without notice anytime they want. And we're fine with that, we invite those kind of inspections. We have not one, we have three traffic reports, we have two that were done before the hearings officer, we have one that looked at the appeal, and that's in the record as well and you'll hear from ms. Kune a little later. There is no traffic impact. The parks department had no comment. Pbot had a favorable comment. If there were going to be an impact on spring water trail corridor we would have heard from it from those two agencies. That trail is already crossed by far busier streets like foster and se 82nd. It's a good trail, i've ridden on it. Our additional 110 trips are not going to make it unusable. We met the approval criteria. Staff looked at it, the hearings officer looked at it, we received no negative bureau comments. This is something that we took great pains to make sure we addressed the approval criteria. This is 81522oi. It requires us to demonstrate the public benefits outweigh impact that can't be mitigated. We don't believe there are any impacts that haven't been or can't be mitigated the public benefit is clear. If we're going to have this program, you have to have regional facilities that take this waste. It's not possible to ship individual garbage truckloads to compost facilities outside of the city that would not be sustainable it wouldn't make sense. Let me turn quickly to the exhibits and then i'll finish up. The two photos on the first exhibit, the large one to the left shows the aerial. You saw this from staff. The important point to note is the forested slope on the south, that southeast knapp road, we have no access, the condition prohibits us. We'd accept a condition saying we don't want access. We're not going to go that way. We're going up to foster. The zoning map shows we're in the center of an industrially zoned area. That's where we should be. There was a blow-up, the ih area, it shows we're in the middle of it, we're not near johnson creek on the north and we're away from the forested slope to the south. And the last exhibit simply is a blowup of information that's already in the record. It shows the facility and the arrow shows how the trucks operate to and from the building and into the building. We think bds and the hearings officer got it right. We ask you to reject the appeal and approve the application. We're comfortable the conditions the hearings officer imposed but we'll also accept additional conditions. And we'd like to you keep the written record open. Thank you for your time.

July 13, 2011

**Leonard:** Where does the food waste come from?

**Dutra:** In this particular case we anticipate food waste coming from residences within the area, including the lenses area. As well as small businesses that generate restaurant food waste.

**Leonard:** How does it get from where the food waste is generated to your facility?

**Dutra:** You, as a resident in the area would be asked to deposit it into a container that would be placed on the curb, collected weekly into a compacted truck. Again 8 to 10 tons. When the truck is full, it comes to the facility and tips it onto the floor where it's consolidated and shipped offsite. That's what's happening now with the exception of the added component of food waste.

**Leonard:** At the facility?

**Dutra:** At the facility.

**Leonard:** With respect with the materials you take in. And so what is the geographic area in your proposal with that food waste?

**Dutra:** We're anticipating a service area which would include southeast Portland and surrounding communities. It may be market driven. There may be other facilities such as metro south that it will compete with. But we believe that there's going to be sufficient volumes to support the business and the investment we're moving forward.

**Leonard:** The nearest facility beyond the one you're proposing is subtle road and yeon road?

**Dutra:** And there has been discussions from metro they plan to accept it at metro south, although I don't know that's been confirmed.

**Leonard:** Oregon city.

**Dutra:** Yes, Oregon city.

**Leonard:** I'm curious, if you don't have any particular geographical limitations, how you can estimate there will only be 110 extra trips a day.

**Dutra:** I'm not sure where the 110 trips a day come from.

**Leonard:** It comes from your data from your traffic engineer.

**Dutra:** I'm considering both inbound -- you're considering both inbound and outbound trips.

**Robinson:** 35 garbage trucks and 35 out and 10 semis in and out each.

**Leonard:** You're anticipating a question i'm going to ask, I want you to finish.

**Dutra:** Right now the only city that's moving forward with plans to allow for the collection of food waste is the city of Portland. The city is shared with us figures that range between 60,000 and 80,000 tons per year generated citywide. We're an anticipating receiving a percentage of that, that we'd then extrapolate down to the number of loads that we're receiving. As well as a design capacity.

**Leonard:** So then how would it be determined whether or not you actually would be the receiver of the food waste, ultimately if we had a full-scale program?

**Dutra:** It would be entirely up to the haulers. There's no flow control.

**Leonard:** I guess i'm wondering about the assumptions that were made, 110 trips, what were the assumptions made -- .

**Dutra:** The size of the floor. It's the design capacity of the facility. And that is the maximum amount we feel the facility under that design can manage.

**Leonard:** So you're comfortable saying would you agree to no more than a limit?

**Dutra:** Correct.

**Leonard:** The analysis from the hearings officer also finds according to your data that retail sales will occur at the property for soil amendment Sales?

**Dutra:** M-hmm.

**Leonard:** Explain that to me.

**Dutra:** Go ahead.

July 13, 2011

**Robinson:** Your code allows in this zone retail sales no larger than 3,000 square feet. If you visited the site or look at the photos, what we have are open bins north of the building, it's bark dust, the kind of things that a gardener would back up his truck, to or her truck, put it into the truck and take it away.

**Dutra:** The hope is that as you bring yard debris to us as a self hauler, you're going to then say, hey, throw a couple yards of compost in for me.

**Robinson:** It's what would you find at a garden supply area. Julia kuhn from kittleson can probably answer the questions better than i, but I can tell you in the discussions we had with mr. Haley we erred on the side of guessing more traffic than we believe the area will attract. It's that small retail area.

**Leonard:** But you're arguing on one hand that you're not going to be composting on the site, but you are saying you will sell compost --

**Dutra:** We do currently compost. It's a finished compost. It's no longer active or gassing or generating odor. It's a finished compost material that you would apply to your garden.

**Leonard:** Why does the hearings officer say on page 9 of his decision the expanded use including the soil amendment sales? What do you mean by the expanded use?

**Robinson:** In that zoning district, you can have up to 3,000 square feet of a retail use, you have to call it out in your application. It's not part of the cup. We discussed it with bds staff. That's what the hearings officer was referring to, are those open bunkers where the bark dust and the final -- the same thing one would find in any garden shop.

**Leonard:** Are you taking any of the items coming in in this new application and turning around and selling them directly at a retail level?

**Dutra:** Not at this time, no.

**Robinson:** No.

**Adams:** Can I clarify? Are you curing or cooking, whatever that word is, compost?

**Robinson:** We have not applied for any permit from any local or state agency to compost. The materials are trucked off site outside of the city of portland.

**Fritz:** Where does the compost come from that you currently sell?

**Dutra:** Largely the subtle road facility and the foster road facility and one additional one in west linn that we operate.

**Robinson:** We're not making compost at either site.

**Dutra:** These are reload facilities only, materials largely generated out of north plains. The nature's needs.

**Robinson:** That's where the composting occurs.

**Leonard:** In the hearings officer report, on page 13 he mentions that inside the building trash will be separated from the other materials. Is that trash that would be thrown improperly into food waste? Or what is that that he is describing.

**Dutra:** We currently do that now as a dry waste facility on occasion, the waste can find its way into debris boxes that contain c & d material. We separate that at the facility. If a load was to come in and there was large percentages of contamination that would warrant some -- a laborer there to pull out trash bags, or something that was inappropriately placed into a residential container, we might if we have an opportunity to pull it out there, otherwise it's pulled out at the compost facility.

**Leonard:** So currently there isn't any limitation on the amount of food waste you could process at the site, other than your stated intention of not processing any more than a given amount.

**Dutra:** There are no stated limitations. There are physical limitations in the design of the operation, and there are stated limitations within the permit capacity of the facility.

**Leonard:** Stated limitations in terms of the square feet.

July 13, 2011

**Dutra:** That as well as the number of trucks.

**Leonard:** But could you expand the hours of operation to accommodate more?

**Dutra:** Not without the approval of metro or deq. We'd have to go back through an approval process for the operating plan.

**Leonard:** What are the hours of operation of the other facilities?

**Dutra:** It ranges through the seasons, but at this point it's 7:00 a.m. To 5:00 p.m. At times during the summer seasons it's 6:00 a.m. To 6:00 p.m. Six days a week.

**Leonard:** And what are the hours of operation on the lenses site?

**Dutra:** They would be the same.

**Leonard:** Thank you.

**Adams:** Commissioner Saltzman?

**Saltzman:** So the 35 trips, or trips by hauling trucks per day, I'm curious, if the decision to go to your location is totally driven by a hauler, are you going to stop a hauler at the gate and say you have to go to metro central, or metro south? Sorry, we've had our 35 trips?

**Dutra:** I believe that if we were to receive all 35 trips, it would total an amount that exceeds what the city has -- what the city currently generates in yard debris. 35 trips in roughly 10 tons a load, 350 tons a day, that's far and above what we think the city is generating.

**Saltzman:** At some point I think we're directed -- at some point you can expand your market to other jurisdictions?

**Dutra:** We could. At that point we would have to come back and amend the operating plan. Which would require deq and metro approval. It's our understanding that is a fixed facility capacity. We'd have to probably expand the floor as well, which would require a permit from the city. There's an approval process we would have to go through in order to expand that. You just simply can't open it up to 400 truckloads a day and operate.

**Saltzman:** According to your analysis, 35 trips by yard debris trucks, to be correct --

**Robinson:** Garbage trucks.

**Saltzman:** They're dedicated to picking up the yard debris. When I think of my hauler, there's a garbage truck and a yard debris truck.

**Dutra:** Which are -- correct.

**Saltzman:** So 35 trips constitutes the most that Portland --

**Dutra:** That is the maximum design capacity of the facility. We get to that point, it's shut off.

**Saltzman:** And then the -- I haven't read your application, but the expert from the appellant mentioned there's a phrase, the sanitary conditions will be maintained, but that's not defined. Could you define that for us?

**Robinson:** Our application is 20-25 pages long. We went through each approval criteria and there were several that address the conditions of the application and the -- and provide a nuisance mitigation plan. I believe the phrase he was referring to was in the nuisance mitigation plan. We set a baseline saying we maintain a sanitary facility so we wouldn't create nuisances. And beyond that commissioner to explain how we would do that.

**Dutra:** Typically those operating plans are approved by deq and metro and they include odor monitoring plans, they include best management practices, and certain daily and weekly activities. So, because, again, the facility hasn't gone through the step much being permitted through those entities, these plans have not yet been drafted and developed. But they will be.

**Saltzman:** You don't have at this point a deq permit or a franchise from metro. Is that --

**Dutra:** It's a license from metro and a permit from deq. And that is correct, we do not have those as of yet.

**Robinson:** But we do have permits we're operating under now.

July 13, 2011

**Dutra:** Right. We do for the solid waste and yard debris aspect of the operation. But not the type three organics.

**Saltzman:** When you do get your permits you intend to stipulate no more than 35 --

**Dutra:** Quite clearly.

**Saltzman:** Ok. Just on the 48 hours for the waste being present --

**Adams:** You made a good point. Not knowing exactly what approval, but if council does consider a vote to move this forward, a requirement that you notify us of change of deq or metro so that we're not sort of on the sidelines?

**Robinson:** Absolutely, we could accept that condition.

**Saltzman:** I share the notion when I think of no more than 48 hours, but I also think after waste transfer station, stuff moves from one end to the other more or less, in a big transfer station. So are you saying that in 48 hours -- something that comes in at hour one will not be there 48 hours later?

**Dutra:** Typically --

**Saltzman:** At some point the floor will be clean, totally clean.

**Dutra:** Correct. In fact, if required, for example, should vectors become a matter of concern, we could operate the facility in such a way to make -- ensure all of the waste is off the floor by the end of the day and containerized, either in an On-site container or an awaiting truck that would continue to receive material for next day. Typically these loads will come in in two surges. One about 10:00 a.m. In the morning, the other about 1:00 in the afternoon. As those residential trucks come off the routes. It's very easy to consolidate the material and get it off and out of the building.

**Saltzman:** There was some testimony, and we were referred to the graph about the organics percentage. Again, by the appellant saying that it could be as high as 20%. You're saying you're handling more than that right now?

**Dutra:** At the metro central station it's a 1-1 ratio. Roughly 50%. That's 75 tons a day. Which is about three times what we expect out of this facility.

**Saltzman:** My final question, the bioreactors to control the odors and the negative pressure. Are you using this at other locations?

**Dutra:** Not in transfer or reload facilities. It's used within facilities that actually conduct composting. That actually take the material, leave it on site, and compost it. Very effective.

**Robinson:** We're applying a technology that's used in a place with more intense use to this one to make sure we don't have an odor problem.

**Saltzman:** It's considered a proven, reliable --

**Dutra:** Very reliable, very proven. And very necessary in the pacific northwest. We do not own the building, it is a wood constructed building. And want to maintain the integrity of the building and we feel that it will serve as not only a way in which to manage the odors, but also remove ambient moisture from the air, and preserve better preserve the building.

**Saltzman:** Thank you.

**Adams:** Commissioner Fritz.

**Fritz:** Thank you. Commissioner Saltzman asked many of the questions. Just as a follow up to the deq discussion, are you anticipating needing changes in the bureau of environmental services storm water runoff permit?

**Dutra:** No.

**Fritz:** That was one of the allegations in the appeal. Your information from the bes is that they won't be modifying that.

**Dutra:** That's correct.

July 13, 2011

**Fritz:** Ok. And then mr. Robinson, you mentioned you would be ok with the bureau of development services being allowed on site without notice. That's not the condition of approval that's currently there? It's 24 hour notice?

**Robinson:** That's correct.

**Fritz:** You would be ok with allowing them?

**Robinson:** Absolutely. Yes.

**Fritz:** Thank you.

**Adams:** Any other discussion from council? We'll now hear from -- thank you very much for your testimony. We'll now hear from individuals who oppose the appeal.

**Moore:** We have six people who signed up.

**Adams:** Thank you for waiting. We appreciate your patience. Welcome to city council. We need a third person.

**Adams:** Mr. Shay. Please come forward.

**Kevin Loftus:** I'm kevin Loftus, the representative of the owners of the freeway land two property at southeast 101st where recology is a tenant. The freeway land site has had a long and controversial history as an industrial site. Our group has owned the property for a little over five years. In that time considerable time, effort, and cash resources have been expended to eliminate past environmental concerns and make this a well-run operating location for a variety of good, mostly industrial tenants that employ about 200 people. Two years ago recology purchased the assets of a failing company, which was then a tenant at freeway. Recology worked closely with deq and us to fully remediate a yard area site that had previously been used by the former company. In this process, I came to know and respect recology and their management, and concluded that this was a most responsible firm who would be a valued tenant at freeway land. It is important to note that we are not passive landlords. We do not want any tenant to create environmental hazards, nuisances, or storm water concerns on our property. While johnson creek goes through freeway land, i'd like to note that the developed parts of the property are not prone to flooding, and this has been confirmed by actual results during the 1996 and 2009 flood events. We did not own it in 1996, but we did in 2009. While developing the application for this conditional use permit, We had several meetings with recology to fully understand their plans. We involved our own consultants, this was our own environmental consultant and wetlands consultant and other people. In these meetings and in the end we were satisfied that recology's plans and their conditional use application were sound we then, and now continue to support their application. I would be happy to answer any specific questions that council has on the freeway property because i've heard some things that may not be accurate from my perspective, and so i'm happy to answer any questions you may have.

**Leonard:** I do have some questions. I'm somewhat familiar with the site. As I recall, the site is approximately 110 acres in total and about 50-some acres that is not in the flood zone.

**Loftus:** The site we're talking about now, excluding --

**Leonard:** My question is freeway land itself, the entire amount of property, is about 110 acres? Is that right?

**Loftus:** It's actually 106 acres. We recently sold 2.9 acres to the city.

**Leonard:** And then the area that is in -- not in the flood zone is about 55-50 acres in total?

**Loftus:** It's approximately about 70 acres.

**Leonard:** It's not in the flood zone. So of the 70 --

**Loftus:** In the flood zone --

**Leonard:** It's not in the flood zone.

**Loftus:** I would say it's much higher than that, because the flood zone, What is considered by the fema maps to be the flood zone would be johnson creek and then what had been part of the

July 13, 2011

northeast corner of the property, and that was actually the parcel that was just recently sold within the last month and a half.

**Leonard:** So at lease 70 acres is not in the flood zone.

**Loftus:** Correct, and probably more.

**Leonard:** How many of the 70 acres that let's just say is not in the flood zone. Currently used?

**Loftus:** We use 70 acres on the property.

**Leonard:** All occupied?

**Loftus:** Yes.

**Leonard:** And the particular parcel that is the subject of this hearing is how many acres?

**Loftus:** A little over six acres.

**Leonard:** And so there's occupancy on both sides?

**Loftus:** There is occupancy on three sides, not on the southern side. That comes right up to a mitigation area. Which is probably 150 feet from knapp road.

**Leonard:** The leases that are on the property surrounding the subject property are long-term leases?

**Loftus:** Yes. We have a variety of leases, month-to-month to up to 10 years.

**Leonard:** Month-to-month up to 10 years. But the point i'm trying to get at is, as you can tell from the questions I was asking earlier, I don't have a concern about whether or not this is in the flood zone, as i've said i've spent some time dealing with this property so I understand we're not talking about property in the flood zone, but it's about the amount of traffic that will be generated by the potential expansion of the recycling of food. And particularly given it sounds like the geographic area could be unlimited as to where that product would come from in the city. Why wouldn't I think this might be a toehold that would allow them to allow them to further expand the site at some future point, given the proclivity of Portlanders to recycle and the desire to want to particularly recycle food?

**Loftus:** I would have to go back to the physical limitations of the building.

**Leonard:** But that's not my question. My question is, why wouldn't -- if this were successful, they seek to expand on the site to maybe offer you better terms than an existing lease is providing. To expand the operation.

**Loftus:** They can't, because we're not going to build any more buildings on the site. And this would -- this is an indoor operation. They're limited by their footprint.

**Leonard:** If you were to renegotiate a lease on an adjoining piece of property that you control that isn't the current site so they could expand their operation, what would stop that from happening?

**Loftus:** I'm not sure how to answer that, sir, because they would need -- they would have to come back to you, the city, and metro to expand their operation.

**Leonard:** And I understand that. But they already have an operation on the site, so it would be a matter of expanding an existing operation, not as we're doing today, creating a brand-new one. This seems an ironic argument, the irony is I expect this to be a hugely successful operation, and therein lies the concern, because of the traffic impact and because of the potential associated nuisances with this particular kind of business. It would seem to me there would be a huge incentive to expand at some point.

**Adams:** We should ask those questions of the staff regulators, because I think you hinted at what my understanding is, but we need to make sure my understanding is correct. There are regulatory limitations and there are potential limitations we can put on it, and there are triggers that we can also put on it if we wanted to. In terms of from a landowner perspective, i'm not sure he might have all the details of how to do that. Thank you, sir. Sir?

**Matt Hughart:** Good evening mayor, commissioners. My name is matt, i'm with kittleson and associates. We prepared the traffic impact study on behalf of recology. I wanted to make a few

July 13, 2011

points here this evening to clarify some misconceptions and expand upon a couple of things that have been discussed. In the opponent's appeal, there was an assertion that the traffic counts we conducted for our analysis were inadequate to support the traffic study itself. As you heard from city staff this evening, the traffic counts were conducted order two mid weekdays, which is consistent industry practice. We did look at those counts and determined that there were no anomalies, or unusual traffic patterns, and as such we concluded and so did staff that the traffic counts were sufficient to support the study. The second thing I wanted to point out was the trip generation that we developed for the site as mr. Dutra of recology pointed out, the site itself is limited in its ability to accommodate organic food waste. The amount of trips and associated truck traffic that we assumed is reflective of that. We do consider it to be a conservative analysis based on the information that was provided to us, all of the facilities transportation facilities within the area have been found to have the ability to accommodate the additional truck trips with regards to the springwater corridor, I think some testimony was provided tonight that the amount of truck traffic that this site would generate would not be conducive or would not overlap with the peak bicycle and pedestrian traffic that occurs -- currently occurs on the springwater corridor, and we have traffic counts included in our study that support that. So in conclusion, we found and do believe that the traffic impacts associated with the site can be accommodated, and that there are no detrimental impacts. With that i'll be happy to answer any questions.

**Adams:** Thank you, sir. Hi. Welcome.

**Alex Shay:** Hi. My name is alex shay, and i'm -- i've been living in the lens neighborhood since 2003 about two miles west of the site. I visited the site. I have a business that involves greenhouse gas emissions, renewable energy, waste energy, that sort of thing, and it's in that context that I met chris choate and some of the other folks from recology and got to know them over the course of more than a year while working with the west Multnomah soil and water conservation district around issues about making higher and better use of food waste. We're shifting the whole paradigm associated with management of food waste from regional collection, and long haul, to Arlington landfill or the compost facility at cedar grove, to local connection with short haul to a regional composting facility. So we're taking all the right steps, we're going in the right direction from sort of an extractive use of food waste where none of the value, the energy that's built up in food waste is taken advantage of, to a shorter distance, lower carbon footprint transportation model where the food waste is actually put to a good end of life use. In getting to know the folks at recology over the past year, i've found them to be responsible, and reputable. I think that they've -- based on what i've heard, they've taken the steps to mitigate what would I regard as very legitimate concerns in terms of vermin, in terms of transportation, in terms of odors. I know from the industry that i'm in that they have a good reputation in the bay area with the east bay mud facility. I do not have a business relationship with recology, nor does my firm have a financial interest in this project. But I have gotten to know the guys over the course of the past year, so I have visited the site and I think that these are the kind of steps that Portland needs to take to make better use of food waste, it's something i've been committed to for quite some time. And i'd be happy to answer any questions you guys might have.

**Adams:** Thank you all for your testimony. Really appreciate it. Anyone else? Mr. Standlee? Roy hatcher? Going once, twice, three times. You're it.

**Kerrie Standlee:** My name is Kerrie Standlee, i'm an acoustical engineer with daley, standlee, and associates. I'm here to talk to you about the noise that will be associated with this operation. From a noise standpoint, this location is probably the best you could probably find because it's an industrial location. It's already occupied by many facilities many operations that have the same kind of equipment that will be used in this operation being proposed. We were asked because of the appeals that an adequate study wasn't done to address the noise, even though the study -- the

July 13, 2011

application originally just said noise would be comparable to what's already out there. That was asked to do a study and we went out, did measurements at the facility, existing facility and we did measurements near the neighborhood, and I think have you a copy of the report with you, I want to point out on the last page of that report, if you can flip over to that, it's a picture of the sound levels that were measured near the residences. And you can see basically what situation is out there, the levels are controlled by i-205 traffic, and by local traffic that is basically going by on southeast knapp street. And the -- you can see what we've identified within the data, things that happened on the site. There are quite a few other operations that have trucks, the c-mex concrete batch plant is next door to the recology facility. That's on the east side. On the west side there's the Oregon pallet, where they have an excavator used for moving material around. They also have -- there is a concrete batching, just a small batching plant adjacent to the east side of recology. While we were doing our measurements we observed those trucks with their backup beepers operating the front end loaders operating at that facility, back up -- so would you not be able to distinguish -- in fact there was one truck that came in during that 20-minute measurement that started backing in to the recology facility. Could you barely hear that particular backup beeper, because it goes into the building fairly quickly and it's muted. So the study results show that you'll meet all the city and state noise regulations, and shouldn't be a problem. So if you have any questions i'd be happy to answer them.

**Fritz:** Thank you for staying to give your expert testimony. That's very helpful.

**Adams:** Thank you. We'll now hear from the appellant. Five-minute summary.

**Tom Rask:** Mayor Adams, commissioners, I appreciate your time and patience today in listening carefully to the evidence that's been presented before you. Before I review what you've heard and what you haven't heard, miss sharp is going to respond to the question that mayor Adams raised about specific state standards that would apply in the analysis of this matter.

**Ms. Sharp:** I refer to you title 33, the planning and zoning code. As to an operating scenario, 33.254.040, where the operating plan for the site any heard it's been submitted to deq and metro, but it's not in this record. And that's one of your criteria. A complete nuisance mitigation plan for litter, vectors, dust and noise, 33.254.060, also oar 340960040, there is no nuisance mitigation plan in your record. Noise impacts, we just heard mr. Stanley's testimony and we were handed a report dated july 11. Before that time there was no indication of noise standards in the record. That's 33.262.050. There's no groundwater study for potential direct pathway impacts to the shallow grand water table and johnson creek by the below-ground proposed leachate collection system. 33.815.220. There are no engineering specifications, calculations, or design parameters as to the system's adequacy to meet standards narrative nuisance odor standards. 33.262.070, 33.815.220. No engineering specifications, calculations or design parameters as to the subsurface leachate system. 33.254.040, 33.815.220. There's no method or system proposed to prevent trackout of food waste liquids outside of the building where it would comingle with storm water. 33.815.220, i'd like to clarify the odor standard because that was a question that commissioner Fritz had inquired of to the city. The odor standard is 33.262.070 – continuous, frequent, or repetitive odors may not be produced. The odor threshold is the point at which an odor may just be detected, an odor detected for less than 15 minutes a day is exempt. The applicant has no information they will meet that odor standard.

**Rask:** Thank you. I think that's a good point to start to summarize where we are. What's telling here is what you heard and what's telling here is what you did not hear. Let's take at what you heard initially. I heard the recology testimony, I think the words were "not anticipate" seven times. I heard "we haven't submitted any further studies or plans because we haven't been through the process yet with the city." I saw diagrams presented to you and testimony that the hearings officer and the staff had available to them diagrams and drawings. Councilors, mr. Mayor, look at the

July 13, 2011

city file. It's got nothing in it. We attached it as exhibit H. One diagram submitted to staff. It's not fair to staff to say judge something on a record that's this devoid of information. You heard admissions from Recology that we haven't done that yet because we haven't gotten through the city process. It's your job and the citizens count on you to make sure the code is applied. And just simply saying, we'll get to it later, which is basically what recology testified to today, is simply unacceptable. You've heard Mr. Seggula our expert tell you why their record is so weak. And at the end of the day, that's what you heard a judge on is the record. The record has nothing in it, and these are serious issues. Both Commissioner Leonard, Commissioner Saltzman, and Commissioner Fritz-- you all honed in on critical issues. The catch-22 here is, you expect this process to grow. Well, you don't want a problem that's made worse over time by your own success. And that's why Metro has the standards that it has. It's why what you didn't hear, why this is very different from Metro central. Commissioner Fritz you asked the question, you heard Recology say Metro central is the same as this. No it's not. Metro central takes everybody's regular garbage, bagged up and takes it to a transfer station. This will be raw open exposed food waste, taken at a rate of 20% as per pilot program in the month of January and mixed in an open forum. It's very, very different. At the end of the day, we don't need this here. And if you open this door, you may be hurt by your own success. And you have the capability as per Metro to deal with the capacity. Metro's own report indicated --

**Adams:** Can you summarize?

**Rask:** Thank you. Indicated they have 50% capacity. They have plenty of capacity to handle this. It's a great program and I commend you for doing it. It needs to be done in the right place.

**Adams:** Questions before you take off? Any questions or discussion from council?

**Fritz:** Could you submit a list of the approval criteria?

**Sharp:** We meant to do that.

**Adams:** Thanks for your testimony. Can we have staff come up here? As our staff, is there any -- commissioner Leonard, did you have questions?

**Leonard:** I did. So the applicant said that there were physical limitations that precluded the site from accepting any more waste than what they agreed to. Can you speak to that?

**Frugoli:** Yes. The zoning code's conditional use chapter, the code says that when we evaluate and review conditional uses, the decision or the approval is based on the level of activity, the size, the amount of intensity that is evaluated and approved. So, for example, with this decision we're approving a facility that tells us it will have 35 truckloads, garbage trucks coming in, etc., or 110 vehicle trips generated, that's what was approved. The zoning code says the applicants must come back for another review if they exceed that threshold by more than 10%. And that's through a type three review. So again, it would be a public hearing. What you perhaps could consider in considering this decision is are there additional parameters or thresholds that the decision should specifically include in the decision for example, the amount of tons the number of trips, the percentage of wet to dry material, the hours of operation. Those elements could also be defined in the decision, and therefore it sets the limits and tells the city and the applicant when another review would be required, if the facility wants to expand. Or is again, very successful.

**Leonard:** I appreciate that answer, but the question I was asking, are there inherently physical attributes to facility that prohibits it from accepting any more waste --

**Frugoli:** No. Not that we know of.

**Leonard:** And so if their estimate of trips ends up being more than what the basis for the permit were, what is it that we do that flags the property is being used more for more volumes of waste than what we thought we were approving?

**Frugoli:** This would be like most zoning code compliance issues. It would be complaint generated, staff would be called out to verify if these certain parameters were missed, or violated.

July 13, 2011

There would have to be the documentation and then we would go through the code enforcement process.

**Leonard:** And so the testimony from the applicant was that they would gather waste, food from southeast and it sounded like even beyond. So underlying the assumption of the number of trips generated, did you do any calculation as to what the potential amount could be of product that could come there, versus what they said they were going to take?

**Frugoli:** No, staff did not challenge or question what their application told us. This was the program they were proposing, and the level of activity that was proposed and evaluated.

**Leonard:** Thank you. And we've heard there wasn't an operating plan submitted. Is that accurate?

**Frugoli:** There weren't specific separate pages or reports that spoke to an operating plan or a nuisance mitigation plan, but the narrative provided the explanation provided by the applicant in writing and in testimony at the hearing met with submittal requirements and therefore staff recommended approval and as well as the hearings officer found that the information was adequate to render a decision.

**Leonard:** And finally, the 15 minutes of odor, I'm a little confused about what that means. Does that mean at any one time in a 24-hour period there can be no more than 15 minutes of odor, or within the 24 hours no more than 15 minutes of accumulated odor?

**Frugoli:** What the zoning code says is it's a continuous 15 minutes. Of odor detected.

**Leonard:** So i'm clear about that, could there have possibly be every hour 14 minutes of odor for 24 hours, and that would be within the zoning code?

**Frugoli:** Yes. That type of project would be exempt from the requirement, yes.

**Fritz:** Thank you. I found this hearing extremely helpful. I've heard a lot of interesting and compelling information and i'm going to be looking forward to comments in the record, on each others' testimony and your expert assessment, particularly on the approval criteria that were not met. I'd like to get your staff advice. The burden of proof is on the applicant to prove the approval criteria is met. Do we have anyone on staff who is technically qualified to assess the technical aspects of odor control or the vermin control system?

**Frugoli:** I can pursue that. We have technical staff of course who can evaluate the source control components that's regulated by the bureau of environmental services. We do have bds code compliance division that can help us and guide us with determining how odor is monitored and detected, Etc. And I can -- we can offer that kind of information to you.

**Fritz:** I was thinking more about the pipe system that -- the reverse air system, the water containment. Do we have the technical ability to know whether the burden of proof has been met?

**Frugoli:** The elements such as the catch basin and the containment are reviewed through the building permit review process. So there is city staff that intent to look at that via the building permit. I'll put myself out there and say yes, I think we do. We can offer feedback.

**Fritz:** That would be very helpful. Obviously this is a very technical question as to if the specifications are going to do what the code and the approval criteria require. So that's something that i'll be looking for in the record. And I really appreciate your assistance.

**Adams:** Commissioner Saltzman.

**Saltzman:** I'd like to follow up on that last point. We're not going to ever see - bds will see detailed operational plans, but we as a council will never see that prior to making a final decision on this. Isn't that correct?

**Frugoli:** Unless you expected to be submitted because of this is an evidentiary hearing, more information can be supplied by the applicant as well as the appellant and staff. If you so desire.

**Fritz:** Just following up on that point, I heard the applicants's attorney there would be a week to add more information, and a week for rebuttal. I'd like the staff to make that assessment.

July 13, 2011

**Frugoli:** If I could ask that after the close of the open record, whatever time you decide that is the ever is appropriate, it would be wonderful if you gave staff an additional two weeks to offer feedback and further guidance if you will, to council, then of course after the -- we submit our information, the applicants would get final rebuttal, a period of final rebuttal.

**Saltzman:** I seem to hear from recology that they don't want to submit detailed plans until they've got the land use approval, because they don't want to spend the time, and effort, and money to do that. I guess i'm standing by my point, whether it's four or five weeks from now, it's going to be that long before we give a final approval or disapproval. We don't have another bite of the apple. We're never going to see the building permits.

**Adams:** I think they've offered to provide us apples with spot checks, which we don't often get an applicant to agree in perpetuity to have, unscheduled checks against what we agreed to in terms of operational. In terms of development leading up to metro and deq, where they have to get an agreement from them as well, we do have the ability to give them a certain amount of time to come in to satisfy any concerns we have to show us how they might fulfill everything from -- and also to put in as a stipulation, hours of amount imagination, Maximum number of tonnage, of trips, how they would interact with the association. What are the elements of good neighbor agreement. They have successfully pursued and I understand got agreement from the cathedral park St. Johns north Portland association on a good neighbor agreement, things like the flood control plan, the inspections, no access on knapp road. The neighborhood rightfully has concerns about this and I think that level of detail and expectation is totally appropriate. I realize we're not used to doing that, and it's in our authority to do so.

**Leonard:** I have a fundamental concern with the application. There's a contradiction between what the applicant testified to in terms of the physical capacity of the building to process food waste and what staff just said. That there is not – there might be code limitations but not physical limitations. There are distinctions that are important site and the subtle road site, and the yeon site. In that the adjoining neighborhoods are distinctly farther than the adjoining neighborhoods in this particular site. This is industrial site to be sure and one that I have long proposed active use on. I'm not sure this is the appropriate type of use for this particular site for a variety of reasons, which includes that contradiction and the i'm trying to figure of what the conditions are, I think as ms frugioli's testimony helped me realize that while the staff judged this application based on what was submitted, appropriately so, I think the council's job is to base the application as it is before us and not try to perfect the application for the applicant I think there are a variety of concerns, including the lack of good neighbor agreement and others that need to be addressed before I could support this application.

**Adams:** I think that the concerns expressed -- I don't necessarily agree that I heard contradictions, I did hear a difference of agreement about what constitutes things such as a vector, nuisance, noise, mitigation.

**Leonard:** Can I address that?

**Adams:** There were disagreements about what that is. We get to decide what we think is adequate in terms of those matters. We've done in the past, as we've done in the past, we've left open the record and allowed people to address any sort of short comings in an application in the past. In terms of concerns about this becoming widely successful, if it is wildly successful in this part of town, if it's wildly successful in whatever trips this part of town has served, we're going to limit how much of the overall effort is served by this one facility. I'm not comfortable with leaving -- i'm not comfortable moving this forward without those limitations.

**Leonard:** To be crystal clear, I agree with you, mayor Adams, that there's no contradiction about vector control. There's no contradiction about whether or not this is in a floodplain. That was not my point. I asked a specific question of the applicant, and that was what would prohibit you from

July 13, 2011

expanding this operation on the site from what is proposed. The answer was the size of the building and the property would limit my ability to do that. The staff said that's not accurate, what limits the ability of the applicant to expand, the size of the property, are the underlying assumptions that were made to grant the approval in the first place. That is a huge contradiction.

**Adams:** The great thing about being a member of the city council is we get to establish the final parameters in which a business like this can operate. So whether or not people were consistent throughout the various points of this process or in the question and answers everyone understood fully what was exactly being asked or answered. We are vested with the authority to say hours of operation, amount of tonnage, number of trips, and appropriately so, having spot-checks by our folks who know what to look for, logs that have to be kept according to state and metro rules. Those contradictions we -- if they exist, we get to settle.

**Leonard:** In the ideal world that's what would happen. Unfortunately I -- I was late and the commission in charge of bds, which commissioner Saltzman has now, and know we have had to suspend a number of inspections based on complaints due to staff shortages and layoffs, and I anticipate a problem that could exist with the follow-up you're describing, which should happen, but we're limited to enforce the code at times because of funding shortages. I see that as a potential huge problem.

**Adams:** I don't, because of the vigilance of the neighborhoods that surround this. And we don't mandate these kinds of regular spot checks as a matter of course. And this can be prioritized. So this isn't like other areas that we have had to cut back on and it can be prioritized. And it should be.

**Fritz:** I share several of commissioner Leonard's concerns, so I have two process questioning. I'm still waiting to get the more evidence that I think all sides will be sending in for the city attorney. Could we as a condition of approval, put on a binding good neighbor agreement that would give neighbors a quicker resource than the code enforcement process?

**Kathryn Beaumont, Office of City Attorney:** Explain to me exactly how you would see that operating.

**Fritz:** I'm not exactly sure, but I know in many good neighbor agreements they're more aspirational and the conditions that are in the good neighbor agreement don't allow an appeal even to the code hearings officer. And i'm wondering if we could craft something that would get quicker access back to the city council, in the event the good neighbor agreement was not kept.

**Beaumont:** The purpose of approval is to ensure that the approval criteria can be satisfied. If you can tie the requirement of a binding good neighborhood agreement to ongoing satisfaction of the approval criteria, potentially, yes, I you could impose that condition. I think it would depend on how it's worded and how it would operate.

**Fritz:** Thank you. If we had a week to hold the record open and a week for rebuttal and two weeks for staff assessment, and potentially an approval with revised conditions or potentially a denial, would -- if we were to have a hearing with revised conditions, would we be required to have a hearing on the revised conditions, or would it be council only?

**Beaumont:** I don't believe you would necessarily be required to hold a hearing. You might want to allow people an opportunity to comment on the revised conditions. And maybe as part of structuring sort of the open record period and rebuttal period, you would want to have any proposed conditions submitted during that period of time. So that when you come back, you have conditions that you are picking and choosing from.

**Adams:** I think --

**Saltzman:** I have a question for sheila.

**Beaumont:** Before the council adjourns this hearing, I do want to talk about timing of the open record period and the rebuttal period. Because i've heard some concerns from staff about one week

July 13, 2011

being insufficient amount of time, depending on what kind of technical review you want staff to conduct. So i'd like to revisit that with you.

**Adams:** Why don't we get commissioner Saltzman first.

**Saltzman:** So sheila, I Thought I heard in recology's testimony that there's not a 35-trip limit in our condition of approval, but that's what they intend to seek from deq and metro?

**Frugoli:** I think that might have been a mistake. The proposal specifically told us the number of vehicle trips, the number of trucks coming to the site, that's what was evaluated. Therefore that's one of those parameters that needs to be capped or if exceeded beyond 10%, it's subject to another requirement for another conditional use review.

**Saltzman:** Ok. And then -- thank you.

**Adams:** Kathryn, you were going to explain?

**Beaumont:** The applicant has requested one week for an open record period, and then an additional week for people to respond to information submitted during open record period. Some of the council members have indicated -- there was at least a proposal made that staff conducts a more technical level review of some of the issues that have been raised or the information submitted. If the council as a whole wants staff to do that, one week is insufficient time according to staff. So one possibility – And I think you need to decide whether you want that technical review, if you do, I think what you may need to do is two-week periods. Two weeks to hold the record open, two weeks for rebuttal and council -- continued council hearing after that.

**Adams:** Are folks ok with that?

**Saltzman:** Do you need more than two weeks?

**Beaumont:** Two weeks would leave you -- would take to you july 27th for the initial period. And two weeks for rebuttal would take you to august 10th.

**Leonard:** I would -- .

**Adams:** I want to hear back from staff first.

**Frugoli:** I think council would like us to respond to all new information that's submitted. Therefore we would like whatever time frame you give us and hopefully it's at least two weeks. We would like that after the close of the record to them, develop our feedback, and further guidance.

**Adams:** We don't know exactly what will come in in the first two weeks, do we have the ability to at the end much that time as staff needs more time, do we have the time to extend it? Or not?

**Beaumont:** You do. The difficulty is, staff is going to be submitting a new, an evaluation. That in a sense is new evidence. So I think staff needs to adhere to the same time period as the other parties.

**Leonard:** Before we go --

**Adams:** I want to take care of this time issue and then before we decide anything, i'll recognize you.

**Robinson:** Mike robinson, on behalf of applicant. We're fine with the two-week period. As I said, we waived the 120-day clock. It's strictly a matter of convenience for the parties, staff and city council. Let me make a suggestion. Maybe what might make sense is a two-week period for all parties to submit argument and give staff two weeks to look at that and submit their own report. And then a two-week rebuttal period so the parties have a chance not only to look at what the other party submitted but to respond to the staff, and if your city attorney suggested you come back to a continued hearing after receiving that information, that's fine with us.

**Adams:** Is that fine with you?

**Leonard:** No it's not.

**Saltzman:** I like that approach.

July 13, 2011

**Leonard:** I think we need to take the temperature of the council and if that -- there are three members of the council that are needing that information, I think we should do it. If there's not, we shouldn't. I'm very sensitive to the workload that we're asking the staff to undertake. They are in a particularly overworked state right now, and i'm prepared today to make a motion. And if the rest of the council is not, that's fine. They should do the work, but if there are --

**Adams:** So we'll do that I promise we'll take the temperature. I promise.

**Rask:** I might make -- tom rask for the appellant here. In deciding what to do here, I guess what I would stress with the council is commissioner Fritz, you adequately pointed out, the burden is on the applicant. We're here today, and spent a lot of time and effort --

**Adams:** Is this a process -- I don't want to get back into your summary close. Are you ok with the suggested two, two, and two?

**Rask:** My struggle is that this is supposed to be done during this process. They start in november. So I think for the record we are opposed to leaving the record open for anything.

**Robinson:** We kept a record open at the request of your staff so we could do exactly what we're doing today, answer question and put new facts into the record. That's why there's no clock.

**Adams:** I'm going to poll the council.

**Fritz:** May I ask a clarifying question? If the applicant asks us to keep the record open, do we have to keep the record open?

**Beaumont:** No. This is at the discretion of the council.

**Fritz:** Thank you.

**Adams:** Let's take a poll. We know commissioner Leonard is a no. Is that accurate? Ok. You are a -- I would like comments on the 2-2-2.

**Saltzman:** I like that idea of the 2-2 and 2. If that's all you're asking.

**Adams:** For the moment.

**Fritz:** There's been a lot of time and effort by all parties put into this, so i'd like to hear the additional comments on what has been said today, and what may be put in the record. So i'm in favor of the two, two, and two.

**Adams:** I'm in favor of it as well. So katherine, your advice on exactly what i'm supposed to do at this point?

**Beaumont:** This is the way I understand would it work. What the council would be doing Would be holding the record open for the submission of additional evidence for two weeks. And evidence would need to be submitted by 5:00 p.m. On july 20th. That's evidence in any form, whether it's written, snail mail, email.

**Saltzman:** Two weeks.

**Beaumont:** Two weeks.

**Saltzman:** Today is the 13th.

**Beaumont:** 13, plus the 14th, is 27. Evidence would be submitted by 5:00 p.m. On july 27th. Staff would have two weeks to analyze the evidence that had been submitted to respond to council's questions and submit any recommendations staff has, based on what was submitted during the first period. And staff would have until 5:00 p.m. On august 10th. Council would then -- all parties would have two weeks to rebut, staff's recommend indications, and any evidence -- recommendations, and any evidence during the two-week period and that would take us to 5:00 p.m. On august 24th. The council would convene perhaps the following week, which would be august 31st. And we would need to set a time with Karla to engage in tentative decision making.

**Moore-Love:** 2:00 p.m. On august 31st.

**Beaumont:** So as of 5:00 p.m. On august 24th at the end of the rebuttal period, the evidentiary record would be closed, it would then be council decision making and discussion on august 31st at 2:00 p.m.

July 13, 2011

**Adams:** Ok. So --

**Fritz:** Are we all here on the 31st?

**Moore:** We are.

**Adams:** Ok. So that is the direction we're headed. Is there anything else I need to do before I lower will gavel?

**Beaumont:** This is continued until august 31st at 2:00 p.m.

**Fritz:** And I had mentioned to neighbors who had written that although I couldn't comment on the content of their comments, that I shared some concern about not having the hearing during the day rather than the evening when more neighbors could come. I think given the amount of time that the record is being left open for written comments, hopefully it will not be a four-hour hearing again next time, so i'm not requesting to have an evening hearing, but I do encourage everyone to participate.

**Adams:** All right. That is where we land. We are adjourned. [gavel pounded]

At 6:15 p.m., Council adjourned.

July 14, 2011  
**Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

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

**JULY 14, 2011      3:00 PM**

**Adams:** Good afternoon everybody, welcome to city council chambers, we're glad you are here. This is a quasi judicial process so it follows some strict protocols, and to begin to describe for us those protocols, I will, as soon as we do the -- have the clerk call the roll, i'll ask the city attorney to go over those protocols. Hi, Karla, how are you?

**Moore-Love:** I'm good.

**Adams:** Did you have a good lunch?

**Moore-Love:** I did.

**Adams:** Could you please call the roll. [ roll call ]

**Adams:** A quorum is present. We shall proceed.

**Kathryn Beaumont, Office of City Attorney:** Good afternoon. Before we begin the hearing today, I have several announcements i'm required to make by state law. These announcements concern the kind of hearing we're having today, the order of testimony, and some guidelines for presenting testimony. The kind of hearing we're having today, this is an on the record hearing. This means that you must limit your testimony to material and issues in the record. You can't bring up anything new. This hearing is for the council to decide only if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that you must limit your testimony to the record. In terms of order of testimony, we will begin today with the staff report by the bureau of development services staff for approximately 10-15 minutes.

Following the staff report the city council will hear from interested persons in the following order. The appellant will go first and will have 10 minutes to present the appellant's case. Following the appellant, persons who support appeal will go next. Each person will have three minutes to speak to council. Next comes the applicant or the principal opponent who will have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant, the council will hear from persons who oppose the appeal and again, each person will have three minutes. Finally the appellant will have five minutes to rebut the presentation of the applicant in this case. The council may close the hearing, deliberate and take a vote. If it's a tentative vote the council will set a future date for findings and a vote on the appeal. If the final vote is taken today that will conclude the matter before the council. Finally, just a few guidelines for presenting testimony. Again, this is an on the record hearing which means you have to limit your remarks to arguments based on the record compiled by the hearings officer. You may refer to the evidence that was previously submitted to the hearings officer, but may not submit new evidence today that wasn't submitted to the hearings officer. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the city council's final decision. If you believe someone who addresses city council today improperly presents new evidence or presented a legal argument that relies on evidence that's not in the record, you may object to that argument. Finally under state law only issues raised by the hearings officer may be raised in this appeal to city council. If you believe someone has raised issues today that were not raised before the council,

July 14, 2011

before the hearings officer, you may object to council's consideration of that issue. That concludes the opening remarks.

**Adams:** I have a few preliminary questions to ask. Under the governed ethics statutes, 244, city council member has a potential conflict of interest if the member or the member's relatives or member's business or business associates could realize a monetary gain or loss as a result of the decision on the appeal before the city council. The city council member can also have an actual conflict of interest if the member or member's relatives or business or business associates would realize a financial gain resulting from the council's decision on the matter before us. Do any members of the city council wish to declare a conflict of interest? Hearing none, the next question is around ex parte contact. Ex parte contact has three principle elements. Communication between a council member, and a party to a quasi judicial proceeding about the substance of the proceeding that takes place outside of the public hearing. Do any members of the city council wish to declare ex parte contacts or information gathered outside of this hearing to disclose?

**Saltzman:** Matt Grumm of my staff has met with representatives of both sides of the appeal.

**Leonard:** And sarah Petrocine in my staff as well.

**Fritz:** And tom Bizeau on my staff as well.

**Adams:** Members of my staff have taken information in various forms, phone calls, and emails from both sides. And my staff has provided a summary of that information to me. We've declared our ex parte contacts. Does anyone present in the council chambers wish to ask me or a commissioner about any of the ex parte contacts that we have disclosed today? All right. Do we have -- do council members have any other matters that need to be discussed before we begin? If not, can we please have our very good staff come forward. Please begin.

**Sylvia Cate, Bureau of Development Services:** Good afternoon, mayor and commissioners. I'm Sylvia Cate, the assigned planner for this review, and i'm representing the hearings officer's decision which has been appealed by the ashcreek neighborhood association. The tualatin valley water district operates a water distribution facility at the site, which includes two steel water tanks, each with half a million gallons capacity. The first was constructed in 1952, the second 10 years later. The district proposes to upgrade and redevelop this facility by demolishing the existing water tanks and replacing them with a single 2 million gallon concrete reservoir. The district also requests an adjustment to allow vehicle areas on the site to remain in gravel rather than be paved with impervious asphalt. The applicable approval criteria are listed and discuss the proposal and how it complies with these criteria. The 120-day clock for this application will expire on august 1st of this year, unless the applicant further extends it. The site comprises two lots approximately .65 acres in area, and it is developed with two steel water tanks, and associated barrels and piping. The water facility is surrounded by a black chain link security fence. The southwest corner of the site is landscaped with low plants and shrubbery, with pleasantly wide gravel pedestrian paths and three public benches situated at various points in this landscaped area. The site has frontage at the northeast corner of the intersection of southwest garden home and southwest 62nd avenue. The surrounding area in all directions are single dwelling residentially zoned lots, r10 immediately surrounding the site, and north of southwest garden home and r7 zones lot to the south. The existing reservoirs are nearly 50 and 60 years old and do not have foundations. Neither tank meets current safety and seismic standards. Replacing the existing tanks will eliminate these obsolete structures, and their proposed concrete reservoir would add 1 million gallons of additional water storage capacity at the facility. This is an aerial view of the site in the immediate vicinity and it's noted in the hearings officer's decision residential uses and development surrounding the site in all directions. The existing tanks were approximately 45 feet in height and a proposed concrete reservoir will be 46 feet in height. The site will be fenced with security fencing similar to what

July 14, 2011

currently exists. Some trees are proposed to be removed along the east property line to provide sufficient maintenance clearances and new landscaping will be installed to replace the trees as well as landscaping throughout the site. Street trees are also required. The existing sequoia trees along the east and north property lines are on average 100 feet in height and are densely planted such that they form a very thick landscaping buffer. Views of the existing facilities are limited from the north and east due to these trees. The improvements include additional landscaping along the south and west property line that meet zoning standards and further screening the reservoir from direct views. The hearings officer received numerous letters and testimony at the hearing from neighbors in opposition to the proposal. They asserted the proposed reservoir was so large it would cast shadows across the multiple properties to the north and impact livability. The applicant prepared the shadow study that demonstrates that the majority of the shadows cast were due to the hundred-foot tall trees on the site. Referring to the shading and size of the proposed reservoir, the hearings officer found that the record contains, quote, substantial evidence that the existing two water tanks in the current landscaping creates impacts upon the adjacent residential properties, end quote. However, he also found, quote, the impacts will not significantly increase if this proposal is approved. Institutional uses in a single dwelling residential zones must comply with special institutional standards which is reflected in the table you see before you. The proposed reservoir meets or exceeds all the required setbacks, is under the maximum 50-foot height limit and will exceed the required landscaping and screening. The proposed reservoir will result in a total building coverage of 25% of the site well below the 50% maximum allowed. The purpose of these separate institutional development standards is found at 33.110.245a, which states the general base zone development standards are designed for residential building. Different development standards are needed for institutional uses which may be allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impact on the surrounding residential area. At the public hearing the applicant requested that the record be held open for 60 days so that the district could have more time to meet with the neighbors and collaborate on potential revisions to the proposal to address neighbors' concerns. The result was a revised site plan, which would -- eliminate an adjustment, save additional trees on site, added additional berms and landscaping throughout the site for visual interest, and reconfigure a pocket park area at the corner with a public thatch and a gravel site path. The applicant submitted photos simulations depicting the existing conditions. Looking at the site from southwest 62nd. And depicting the proposal with landscaping looking at the site from that same vantage point. The applicant also submitted a number of architectural renderings depicting the revised proposal and landscaping from several vantage points. It's important to note that the existing conditions of the site include very sparse landscaping along the western boundary. Thus exposing this facility to near full views to the residents along southwest 62nd. The revised site plan not only meets the perimeter landscaping requirements, but also adds significant landscaping throughout the site and provides a public bench within the landscaped area at the southwest corner of the site. The hearings officer approved the proposal with three conditions. The first two to ensure aesthetics are maintained, and the third condition to ensure safety in an emergency. We many now go on a virtual site tour. This is a view looking to the south toward southwest garden home road. Subject site is to the left and southwest 62nd is to the right. This is the view in fact from southwest 62nd, the existing landscape on the site does not meet current zoning standards, however, the proposed improvements include installing substantial parameter and on-site landscaping that exceeds the zoning code requirements. This view of the site shows the existing stand of sequoia trees which are approximately 100 feet in height. These trees form a mature screen of greenery that obscure the facility from views from the north and east. Some of the trees along the property line will have to be removed to allow sufficient space for the

July 14, 2011

maintenance of the new reservoir. The trees will be replaced with new landscaping that meets zoning requirements. The view is simply to show the scale of the existing tanks and how tightly packed the planting is of the sequoia trees. This view shows the gravel path and the public bench surrounded by ornamental landscaping. You can see southwest home road -- garden home road in the background. At the public hearing a number of issues were raised by neighbors and the neighborhood association. Some as noted in the hearings officer's decision, are not relevant to the applicable approval criteria. Other concerns raised were relevant, particularly regarding the visual appearance of the impacts of the proposal on the residential area. As previously mentioned, the applicant requested additional time in order to work with the neighbors and make revisions to the proposal based on the public input received during the series of public outreach events. The ashcreek neighborhood association appealed the hearings officer's decision, stating that the proposal does not meet the physical compatibility criterion, nor complies with the allowable far floor area ratio for institutional uses in residential zones. In a slide you see the exact language of the specific approval criterion. The hearings officer noted this criterion, quote, does not require the proposed use to look just like houses in the nearby residential area. The hearings officer found that, quote, other times institutional uses that locate in residential zones do not look like and/or bigger than residences in the surrounding area. The hearings officer found that the relevant characteristics needed to be considered collectively and a balance employed. The hearings officer found that on balance the proposed water reservoir will be compatible with adjacent residential development and that the proposed water reservoir will not significantly conflict with the appearance and the function of the residential area. That concludes staff's presentation. Are there any questions?

**Fritz:** I have a couple questions. Thank you that was a good presentation, as usual. What are the street improvements being required on southwest 62nd?

**Cate:** Pbot is requiring a sidewalk and curb along the frontage. I believe there's a little bit of dedication as well to make sure those improvements will if it.

**Fritz:** Any paving?

**Cate:** No. I don't believe so.

**Fritz:** Would this property be waived in an lid?

**Cate:** I don't think pbot mentioned any waivers in their response. They were looking at the southwest garden home road and its transportation classification and determined that it warranted sidewalk and curb and sidewalk improvements.

**Fritz:** Thank you. Could you tell me a little more about the far? Why does this property have a far on it?

**Cate:** It's actually the institutional development standards have far, or floor area ratio, it's a ratio between the amount of floor area of the development in proportion with the square footage of the site. Institutional uses are allowed in single dwelling residential zones are allowed .5 far to one square foot of the site. Technically the reservoir is considered a building because it meets the zoning code's definition of a building. It has a roof and it's enclosed on more than 50% of the sides. Obviously it has a floor at the bottom to make sure it contains the water. But the structure itself is not intended for human occupancy. The far issued the neighborhood association submitted into the record and argued that because of the height of this structure, the city should consider that the reservoir has the equivalency of 4½ stories, and therefore we should compute the far based on 3½ additional imaginary floors. Which is not how the city and bds routinely applies that criteria, and we apply it to existing floors.

July 14, 2011

**Fritz:** Because it only has the one floor at ground level, we don't calculate that out? But in order to give us a sense of where the bulk of this building -- this structure, if it did have floors like an office building with the size of a structure be allowed on this property?

**Cate:** It would -- if this were a building and did have 4½ floors, as the neighborhood association is arguing is how we should look at it, it would exceed the development standards and they would have to redesign or request an adjustment and have that adjustment approved.

**Fritz:** We'll hear more about that.

**Cate:** I believe so.

**Fritz:** Thank you very much.

**Cate:** You're very welcome.

**Adams:** Any other discussion with council? If not, then we will hear from the appellant's. You'll have 10 minutes.

**Dean Smith:** Good afternoon, mr. Mayor, members of the council. My name is dean smith, i'm the president of the ashcreek neighborhood association, which is the appellant in this matter. My residential address is 8802 southwest 52nd avenue in Portland. We appreciate the opportunity to appear before council on this matter, which has great importance to our neighborhood. I would like to say we do not take our right to appeal this case lightly. We have exercised our right only after careful consideration of the impact of the project will have on our neighborhood and also the strenuous opposition and objection to it by the most affected members of our community, the neighbors who are immediately adjacent to the project. We believe the central issue is very simple. The size, scale, and style of the proposed project is not compatible with the adjacent residential properties, and further, is injurious to the character and residential qualities of our neighborhood. Those familiar with southwest garden home will recognize it is a relatively pastoral setting with residents along a lovely two-lane road. And this is the context in which the council must evaluate whether or not this project as currently proposed is compatible with the neighborhood. The case focuses on the core issue anticipated by the city code, governing conditioning use and residential zone. The code as you know is designed to allow for certain types of otherwise nonconforming uses with conditions so long as they're not injurious to the neighborhoods in which they will be located. Therein lies the question, is a 2 million gallon water tank twice in size to the current tanks and thus quite -- twice the current level of use in this location compatible? Does it meet the language and intent of the code? So the basis for our continuing objection to this condition are these. The structure of the size and scale of this will alter the character in appearance of this section of the neighborhood to the detriment of the immediate residence and also the neighborhood as a whole. Chapter 33 -- requires that quote the proposal will be compatible with the adjacent residential developments based on characteristics such as site size, building scale and style, setbacks and landscaping. We do not believe this project meets this criterion. We believe the hearings officer has narrowly construed compatibility. We believe further council has the authority to more broadly interpret the code which is clearly intended to ensure there are minimal adverse impacts in this context it's important to recognize the city code allows certain uses that are not allowed outright on the basis that they do not have significant adverse effects on the environment or changes the character of an area. Further the code steps forward approval criteria that allow institution and other living uses in a residential zone that quote, maintain or do not significantly conflict with the appearance and function of residential areas. The code specifically intends to protect residential neighborhoods from uses that involve a building scale and style not compatible with neighborhood character and livability. We believe it's within council's prerogative to interpret the code accordingly in order to protect residential neighborhoods. We disagree the project as proposed meets the maximum far requirements. It is important to

July 14, 2011

recognize that the standards set forth maximum and minimums that apply. However these are not absolutely prescriptive in that a project can fall within these maximum and minimum and still not be compatible in the context in which the project is placed. In other words, the standards are part of the evaluation of impact and compatibility but not the sole determinants. This is where council as creators and arbiters of city code must exercise its judgment since standards do not always lead to the right and responsible decision. This serve as guide, and they need to be looked at in the context. In evaluating the issue of scale, size and building style, the best tool we have is floor area ratio. In this case it's a difficult proposition,. The hearings officer has based his findings that this project does not violate building scale solely on the criterion and notion this is a one-floor structure. The basis for that finding is a dictionary definition after floor because the code does not provide specific direction in this situation. One must look at the intention of the code as having far as one of the standards. That intent would necessity a reasonable wave assessing far in this type of structure as a means of understanding this bulk and mass and its impact. In our view the appropriate way to calculate far as a measure of visual impact and to base it on some reasonable measure such as a standard floor height after structure. In the case of this type of structure, presented to the hearings officer a 10-into the -- it would be more like three stories in height -- using the hearings officer's method of calculating far, the proposed structure would have to be 170.4 feet in height to exceed the allowable far in the standards. This clearly is not the intent of the provision of the code. The hearings officer's method of calculating far would render this metric in the code meaningless, which we don't believe was council's intent. What if this were a different type of storage facility? Say a public archive or a record storage facility? That was typically a facility like a warehouse with 15-foot floors, in this case three floors in that event the same size structure in this same location cannot be allowed. Same type of use, passive storage. Same size structure, one allowable, one clearly not allowable under the far standard. We're not proposing the council make an arbitrary determination this is a storage facility of three floors and you have to disallow it. What we are suggesting as if this should inform your decision of compatibility. If one exactly the same structure is allowable in one instance, but not in another, both passive storage uses demonstrates the judgment and an appropriate interpretation of the intent of the code is essential in this case. We've included an attachment have you that shows the far calculation with a 10-foot floor height, we didn't do that for a 15-foot floor, but they both would exceed the requirements of the code and they have a striking difference. Finally while the applicant has described this project as a replacement, it's in fact an expansion, a significant expansion and use of the site. The proposed structure is twice the size of the existing tanks, and represent as considerable increase in a scale and use with corresponding impact on a neighborhood. And this in our view in itself constitutes an impact that damages the residential character and supports our belief that it does not meet compatibility standard in the code. It's important to recognize that the closest residence to the structure is less than 45 feet from the perimeter of the facility. So the context is a tightly compact neighborhood around a site that is an oversized structure on an undersized parcel. Finally we would like to say what we would support. That is an actual replacement of the water storage currently at this site. We have no objection to the construction of a new seismically sound structure with a capacity of 1 million gallons, we would have no objection to a full replacement. But doubling the size of the storage tank on this site in this location is untenable to the neighborhood. We believe this conditional use application should be denied and that the hearings officer's decision should be overturned. This project design does not render the project compatible with adjacent developments as required. Thank you.

**Adams:** All right.

**Fritz:** So the neighborhood doesn't mind whether it's two .5 million tanks or one 1 million tank.

July 14, 2011

**Smith:** We think a 1 million gallon tank, a complete replacement of the existing use, would be appropriate. It would be compatible. We think a 2 million gallon tank, very tightly sized on this site within the setback requirements does not meet it in the context of the vicinity of residential dwellings. There are no other water towers we're familiar with or aware of in the city that have this size after facility on this small a parcel, .67 acres. It's a very constrained site, in a neighborhood and we don't think it should be allowed at that scale.

**Fritz:** And are the existing tanks plain concrete?

**Smith:** No, I think they're a metal. Painted metal. This would be a gray concrete facility.

**Fritz:** Thank you.

**Adams:** We'll now hear from the principle opponent of the appeal.

**Beaumont:** Excuse me, mr. Mayor -- how many people have signed up?

**Moore-Love:** 12 people.

**Adams:** You have two minutes each.

**Moore:** I think the notice said three. Did you want to do two?

**Adams:** M-hmm.

**Adams:** We just want your name, and if you are authorized as a lobbyist or authorized to speak on behalf of an organization or business, you must declare that as well when you state your name. If you prepared for three minutes we'll let you go the full minutes but we found that what can be said in three minutes can be even more compelling in two.

**Charles Osborne:** I'm charles osborne, resident of 8021 southwest 61st avenue in Portland. I'm a simple resident and represent no one except myself, my opinions are my own. Good afternoon. Tualatin valley water district the hearings officer have misinterpreted the city of Portland zoning code in attempting to site an industrial facility in a residential zone in violation of law specifically title 33. As former Portland hearings officer teaches in his 20 february 1981 denial of water district's early siting attempt, code dictates the structures and facilities must not be so massive they are detrimental or injurious to the character and value to the surrounding properties. These are qualitative conditions. Code conditions aids us by allowing us to quantify these conditions. The massiveness to the structure to the sides of the lot. The proposed facility fails the criterion set forth by law. Title 33 specifies the maximum allowable ratio of floor space to lot size. The proposed tank fails this criterion. Water district and officer frank attempt to misdirect attention from their action to the extent to include webster's dictionary definition of the word floor to the record to justify their attempt to circumvent code. They point out the 50-foot tall floor has but one tall tower has but one floor. If code had intended to consider the footprint of the structure in relation to the sides of the lot the wood footprint or foundation would have been used. Code specifies floor space. The massiveness of any structure is defined not only by length and width but also by height. A residence of four stories height is four times as massive as single story dwelling. Code intentionally uses the term floor space the sum area of all floors as a simpler way of quantifying the massiveness of the structure rather than demanding all sorts of gee met call calculation measurements of roof pitch and dormers. Thank you.

**Charold I Baer:** I'm dr. Cherold baer, I reside at 8039 southwest 62nd place. And I have for 33 years. I've tried to do my duty in Portland by helping you maintain the status as a city of roses. I have a rose garden of 800 bushes. We get a lot of visitors to our yard. The current water towers have not pose add problem in the past because they were shielded by mature bushes and trees and painted green. Therefore they harmonized with the environment. Those were removed two years ago for quote unquote security reasons, perhaps in preparation for this application. And the result is a large storage structure that fairly defines the environment for us, and changes the character of the neighborhood. The proposal that is before you would replace those two structures with one

July 14, 2011

large facility -- structure with double the capacity, which means it would continue to dominate the whole neighborhood. And I love living in Portland on -- off of garden home road on 62nd place and never would I have ever dreamed I would be living on water tower place with a megalith that defined my environment. Thank you.

**Adams:** Thank you. The next three?

**Nancy Donner:** I miss nick Fish. Where's nick?

**Adams:** He's on vacation.

**Donner:** Good for him. My name is nancy donner. I live at 6254 s.w. Garden home road. Diagonally across the street from the proposed monstrosity, ok? Now, i'm going to yield most of my time, because a picture is worth a thousand words. I have a picture for you to pass. It doesn't fit with the neighborhood. It gives no benefit. When our taxes go down, we're going to lose tax money. We've been carrying water for them for 60 years. It's not even for us. And this proposed double 2 million gallon that they want to shoe horn on two-thirds of an acre next to a road that is hardly wider than this table. Anyway. In all due respect, I urge you to just turn this down. Thank you.

**Adams:** Thank you. Sir.

**Travis Stenerson:** Good afternoon mayor and commissioners. My name is travis. My family and I have lived in the neighborhood for around five years. It is a neat neighborhood, yes happy to move to. I'm concerned with the proposed water tank size, proximity to garden home road, and new visual impact. I fear it will be a new target for taggers and graffiti. I'm concerned about the surrounding large sequoia trees which will be removed. The population of considerable size trees is one of the reasons my wife and I chose to move into the neighborhood. I'm concerned what could happen to our surrounding homes if there was an earthquake and the large size tank was breached. Thank you.

**Adams:** Thank you for your testimony, sir.

**Kip Nagely:** My name is kip nagely, I live about a block away from the proposed tank. I've lived there for 42 years. I remember about 20 years ago it was the metsger water district at the time, they wanted to build two more tanks. To what existed there. Neighbors got together and opposed them, and a hearings officer turned them down. Given his reason was a negative impact on the neighborhood. And building one that's twice that size would be even more negative on our neighborhood. I'd like to take this opportunity to ask the council to consider that impact and to reject the proposed plan. And suggest perhaps that we wait another 20 years and take another look at it. Thank you.

**Adams:** Thank you. Mam, go ahead.

**Virginia Ottmar:** My name is virginia ottmar, I live at 6245 southwest garden home road. Directly across from the water towers. I have lived there since 1972. The proposed water tanks do not fit with the livability of our neighborhood. It cannot be mitigated. Thank you for hearing.

**Adams:** Thank you all.

**Fritz:** Go ahead.

**Nancy Trullinger:** My name is nancy, i'm a board member of the ashcreek neighborhood association. My address is 5445 southwest dolph drive. I have lived in this neighborhood for 32 years. And I thank you for allowing me an opportunity to speak to the council. I speak in opposition to that new 2 million gallon water reservoir. This huge new water tank will seem like a commercial billboard. A blank billboard set down on the ground with family homes on garden home road. It would be at ground level. When people have purchased homes or rented apartments to live in in this area, they knew about the two current smaller water tanks where they were located and how they appear in the neighborhood. Offset from the street landscape and partially screened

July 14, 2011

by trees and shrubbery. A new 2 million gallon water tank will impact the character of the neighborhood. We are being asked to have something placed in our neighborhood that will sit on a small lot and stick out of place. The proposed reservoir is simply too large for the land and too out of place in the neighborhood. I respectfully ask that the tualatin valley water district be required to downsize their tank to a more appropriate size. Thank you for the opportunity to give my opinion.

**Fritz:** Thank you.

**Bill Schoonover:** I live at 63 -- where I do live?

**Fritz:** You don't have to give your address.

**Schoonover:** I live on garden home road. Mayor and council members, I -- I do not have a prepared statement. But I think when you consider what we hear every day on tv, we're hearing that government says this, government says that, and then in the background we're hearing the citizens. And we're finding that it's very difficult to believe people who are representing us in government, but the truth always comes from the citizens. These people have lived there for a period of 20 to 40 years. It can be, has been, a very attractive neighborhood. And I can't -- I cannot imagine something as gross as twice the capacity being placed there. I think it's probably very unfair to those residents who have lived there for so many years. If indeed the needs of the community can be met with the lesser capacity, as presently exists, thank you very much.

**Fritz:** Thank you, sir.

**Lyndon Ruhnke:** Good afternoon, council members. My name is lyndon, and I live at 8121 southwest 62nd place, which is directly to the west of the water tanks. I have a wonderful view of what's there now, and an expectation that if this is built if you allow this to go forward you will be amazed at how imposing the structure will be over the neighborhood. I've included a fair amount of information on my take on the hearings officer's opinion on pcc 33.815.105b2 and 3. The requirements that the proposed tank be compatible with the adjacent residential developments based on characteristics such as site size, building scale size, setbacks, and landscaping or if it is not compatible as the hearings officer suggested, if we took one of those requirement and made that, the failure of any one of those would make it have to be mitigated. I've included some pictures in the record. One is a picture from me. Exhibit 24. The top one is how those tanks exist now. That's in front of my house. It's approximately where i'm pointing to is an electrical panel. If you look there, which is approximately the tank will be approximately 50 feet from where I stand, the bottom one is me standing in front after 2 million tank which is a little shorter than the one we'll get, approximately 50 feet from the tank. I appreciate the fact that the applicant, the hearings officer, and the city believe that the landscaping shown on exhibit 40a will mitigate the problem. However, I think if you look at exhibit 40a, you're going to notice -- I think I have another minute? I think you're going to notice that even the applicant's vision of what this thing is going to look like is imposing. It is out of character with the neighborhood. Even if you accept that the site size and the style and the setback are ok, there's no question that the size of this structure is incompatible. And you have the ability to interpret the code. If you'll please read my comments, you're going to see that simply put, this cannot be mitigated. So to quote president obama, you can put lipstick on a pig, but it's still a pig. And I know these are derelict tanks and they need to be replaced, but please, don't let the cure be worse than the illness. And that is exactly what we're looking at as neighbors. And my three daughters will grow up with this thing looming over us every day. Thank you.

**Fritz:** Thank you very much. To clarify, this second picture is an actual tank, a 2 million gallon tank?

July 14, 2011

**Ruhnke:** A 2 million gallon take, that actually is right off barnes road. It's below the road, it's -- is it a twwd tank. It is a little shorter than ours, and it is sited on about two acres, surrounded by forest and on one side a strip mall.

**Fritz:** And then is this about -- what's being proposed is the new structure will be closer to your property, than the existing -- .

**Ruhnke:** The reason for that picture, commissioner, is where i'm pointing on the top picture to the electrical panel, that tank will come eight to 10 feet from the electrical panel, which is 50 feet from where I stand. And that bottom frame shows the size of the 2 million gallon tank, about 50 feet from where I stand.

**Fritz:** I was wondering if it was photo shopped, but it's actually 2 photographs. Thank you very much.

**Ruhnke:** Thank you.

**Moore:** I believe we have one more person.

**Laura Ghionea-Smith:** My name is laura, and I live at 8050 southwest 62nd place. I've lived there for 21 years. My husband has lived there for about 18. We definitely enjoy the street, and i've always been proud of it, been proud of the beauty, the peace, and of course our neighbors' roses that we're lucky enough to have them across the street from us. My husband and I dread this project, and what it will do to our property values. What it will do to our children, we have a lot of children on the street that just enjoy taking the rides, going back and forth on the dead end street, and this park will take away from that. The tank will replace the park and they'll be -- there is no room for benches or at least I don't envision it. Thank you for listening and like I said, I sent my email.

**Adams:** All right. Now we will hear from the opponents of the appeal. You'll have 15 minutes. Welcome.

**Tommy Brooks:** Good afternoon mayor Adams and members of the council. My name is tommy brooks, and I represent tualatin valley water district who is the applicant. With me is the district's chief engineer, and chris goodell who is with aks engineers who put together the application. Mark will provide an overview of the project and I will address the specific issues on appeal and our approach to that and then chris will be available to answer any specific question ifs they come up about the indication or the project's design. I'll turn it over to Mark.

**Mark Knudson:** Good afternoon. It's a pleasure to be here. A quick overview of the tualatin valley water district. We're a public agency, a water service provider in Washington county. We have a publicly elected board of five commissioners, we serve over 200,000 people in unincorporated areas of Washington county as well as areas of the city of tigard, city of hillsboro, and city of beaverton. We are the second largest water provider in the state of Oregon with all the accoutrements that go with it. We have three sources that include city of Portland, joint water commission, and aquifer storage and recovery, and as such we are also Portland's largest wholesale customer with a Portland water bill of approximately \$6 million a year. What you see is our general service area, the dark blue area on the map. And the project in question is the garden home reservoir that serves our metzger service area just north of highway 217. The reservoir itself is located in the city of Portland, but it serves an area of Washington county in the Metzger service area. Here you see google earth photo of the project site with the two existing half million gallon reservoirs. And particularly notable are the hundred-foot-tall sequoias on the north and east side of the property. Again, located by garden home road and southwest 62nd place. So the existing reservoirs as mentioned in the staff report were constructed in 1952 and 1962, each tank hold a half million gallons. These are steel tanks, and the reasons why we're concerned and interested in replacing the projects is because they're near the end of what I would characterize as their

July 14, 2011

economic useful life. The picture on the lower right corner is a picture probably only an engineer can love. But what you see is the foundation for the existing tank, basically they sit on a small curb any lateral motion because of seismic action would cause the tank to literally shake off of the foundation. So they don't meet seismic requirement, but more importantly, it would cost more to fix the tanks than it would to replace them. But beyond that, the tanks also don't provide the needed capacity. We've done planning analysis to look at capacity requirements, and the tanks as currently configured don't meet the storage requirements of the zone. So our proposal as outline second degree to demolish the existing tanks, construct a new 2 million gallon single storage tank that is of similar height and width, to across the landscaping and screening associated with the project and to keep park like amenities that we've previously installed. We think there's significant benefits associated with the existing site in that it's the existing use is the same. Substantial improved structural reliability of the existing site. One of the key features is that the connecting piping is already in place. All of the piping in the street is already there, thus avoiding the need to further disrupt the public or the neighborhood by constructing more pipes in the street. And last but not least, it provides gravity supply all the way from bull run through the powell butte reservoir to this location, thus it has a minimal carbon footprint associated with this project. This slide shows a cross-section looking east from southwest 62nd and the upper picture shows the two existing tanks, each 46 feet wide and about 45 feet tall. And the lower picture shows the proposed reservoir section which is 92 feet or the two 45 put together, so we're characterizing it as similar in width, as viewed from 62nd, and again, essentially the same height about one foot tall or possible. This is a photograph taken from a similar location on southwest 62nd. Looking at the two existing reservoirs and you see the giant sequoias in the background. We prepared photo simulations to indicate what the project would look like after the existing tanks had been removed and the new reservoir constructed, so this is the same vantage point. We prepared these photo simulations to address the questions associated with photographs taken from the street and other tanks. So we wanted to try to accurately create the perspectives that would be present from the views from the street.

**Fritz:** Those large trees in front of the structure don't currently exist?

**Knudson:** Some of them do. Some of these are added as a part of the landscaping project. This is planting as it's planned, this is at the time of construction when the project is complete. And then this is at full maturity in approximately 20-30 years after the trees have had a chance to mature, fill in, and grow. We think the landscaping provides an effective buffer and screen for the proposed project. I wanted to quickly overview the outreach efforts we had associated with the project. We originally had a neighborhood meeting before we made the proposal. Generally outlining the concept a little over a year ago, it was relatively limited attendance and essentially no feedback. When we submitted the conditional use application the feedback we got from the staff was that there were oppositions to the project. We held a neighborhood meeting prior to the public hearing, we received a lot of negative comments. We went ahead with the public hearing but specifically requested the records be held open for 60 days so we had the opportunity to work with the neighbors. We then conducted additional neighborhood outreach to be able to get additional feedback to pursue additional opportunities to refine our proposal, as noted we increased the landscaping, the screening, we provided additional amenities, and we eliminated the need for landscape buffer variance. Then before finalizing our proposal we had yet another open house with the neighborhood to give them a chance to review our proposal and provide yet further comments before we finalized our proposal. With that I will turn it over to tommy.

**Brooks:** Staff indicated in their presentation there are two issues in this appeal. The first one being compatibility and the second one being the specific standard of far. With respect to the first

July 14, 2011

issue, ash creek neighborhood association has specifically cited to 33.815.105b2 of the code and stated that the project is not compatible with respect to building scale and style. This is the code language at issue. As you can see it sets out specific characteristics. On which one can base compatibility. However the code itself does not define compatibility. That doesn't mean it's an unanswered question in the code. The other section is 33.110.245 which are the institutional development standards. The very specific purpose in this code provision is that these development standards, their intent is to remain compatibility with the surrounding area. Though compatibility is not defined there are specific standards that get us to compatibility. Because the hearings officer agreed with us and found the application satisfied the institutional development standards, we believe on that basis alone the hearings officer's decision can be upheld. The institutional development -- mirror the compatibility characteristics from the conditional use portion of the code so again, with characteristics such as site size, building scale, style, setbacks and landscaping, the only difference is that the institutional development standards lack any reference to building style. That's one of the specific characteristics that's been identified as being insufficient. But the code does not require development to be compatible based on each characteristics individually. And that's evidenced in the code language that says these compatibility is based on characteristics such as these. And overall it's a balancing test, and the hearings officer looked at the overall proposal. So there's been no challenge to the other characteristics such as site size, setbacks or landscaping. We agree with those in total allow this proposal to be deemed compatible with the surrounding residential area. The other point on the compatibility issue is that 33a 15b has two separate components for compatibility. There's b2, which says the proposal will be compatible and then there's b3 that says the proposal will mitigate differences. And on appeal here ashcreek has only challenged the compatibility and not taken issue about the findings of mitigation. Either one of these criteria on their own would be sufficient and for that reason alone the hearings officer decision can be upheld. Second issue on appeal is the far. Our calculation with staff and the hearings officer agreed with yields an far of 0.27, well within the maximum. This number is based on the area of the site and the area of the replacement tank. As you heard from ashcreek, they believe the far is more like 1.06. The difference in the calculations comes down to a dispute over how many floors or stories are in a tank. The hearings officer correctly concluded that there is one floor in the tank, yes, the hearings officer had to look at a dictionary definition of the word floor because the code doesn't define floor and the code says where terms are undefined you look to the dictionary to find out what the terms mean. In contrast to the hearings officer's decision, ashcreek asserts there are 4.6 floors in the tank because the tank is 46 feet tall. That calculation is based on an arbitrary number of 10 feet being the standard for a floor which is not anything from the code or from any other standard. The hearings officer provided a very thorough opinion about the meaning of floor area ratio, floor area and floor and we rely on that opinion. Ashcreek doesn't -- at heart the far is about the intensity of a use, not necessarily about the scale. Far works with height to control the scale and bulk of a building but it's also about intensity and this use am though the number of gallons has changed or will change that are being stored on site, it's still the same intensity of the use. For example, a shorter or taller tank would generate the same number of trips and employee time that would be required at the site. We also think the neighborhood's interpretation would result in unintended consequences for other future development. One example, two single story buildings, one with a 10 foot height and one with 12 foot would be treated differently and without any discernible differences in their appearance or use. Some uses that might come to mind that would typically have, maybe a school, maybe a church has a large sanctuary, to arbitrarily choose a new far based on the height of one of those structures would be the wrong outcome. It also has impacts for the city's water tower to the extent in residential areas they could be inhibited based on

July 14, 2011

the same reason. I want to respond with the remainder of the time to a few of the things we heard from the appellants. The first one i'd like to address is that the tank size is not doubling. The volume of water being stored is. Through the magic of geometry you can use a smaller round tank to get the same volume or you can double the volume but you don't have to double the size of the tank. That's because we're going to one structure. So it's not accurate to say the tanks are doubling in size. One of the comments I heard was that in order -- under the hearings officer's interpretation of far, it would require 174 feet before this development were to get outside of the allowable far. That could be true from a calculation, but then 174-foot building would not be allowed because of the height limits. I heard reference to the sequoias being removed. That is not case. I believe maybe one or two -- it's been referred to as a game time decision when it comes down to how to construct the tank, but largely they'll be in place and in fact during our public outreach process we heard comments from people that at least one neighbor that want more of the trees removed. But we think the balance is to keep them there and to keep that hedge in place. With that I think we'll conclude our presentation and answer questions?

**Adams:** Questions? Commissioner Fritz?

**Fritz:** Thank you. So you said that your study shows you do need extra capacity. How much more extras does your study show? Is that in the record?

**Brooks:** I'll let mark answer that. I will point out before he does that, any kind of need for additional water storage is not a specific criterion. So I think he can address that to satisfy people's curiosity, but it doesn't address any of the criteria.

**Knudson:** So this is a graph, i'm sorry, i'm an engineer, I have to use a graph. We've looked at that under the current configuration with current demands reflecting the current economy and current water consumption and current conservation. We need approximately one half million gallons additional storage at this site. Bates order our planning protection, based on metro population forecasts, we would need an additional half million gallons within the next five to 10 years. And that's based on lower demand projections when we first did our master planning work, the demands would be higher and in fact the project would have been fully utilized within the next five to six years. So we've tried to take into account conservation, we've tried to take into account the economy, and show the slowest growth that we think is realistic for the site.

**Fritz:** Thank you. What percentage of the site is devoted to public space?

**Knudson:** What percentage of the site is devoted to public space?

**Fritz:** Isn't that part of your mitigation that you have a bench area --

**Knudson:** Right. I'll turn that over to our consultant.

**Chris Goodell:** It isn't something we calculated. Just looking at the map I want to say 10% roughly if that.

**Fritz:** Ok. And why are you not planning to paint the tank or make it a colored concrete to make it more compatible with what is there now?

**Knudson:** We've recommended against it based on our research. We looked into this before it was even raised with the neighbors. There are a couple of issues, but the most significant is that as a water retaining concrete structure, moisture tends to dry the minerals that are in the concrete out to the surface of the tank. When you paint the concrete tank, particularly at darker color, it's most prominent, you see white streaks all over the dark paint. So it begins to look like heck within a fairly short period of time. So to be able to remedy that requires typically either very strong pressure washing, typically sand blasting on a periodic basis resulting in even greater neighborhood disruption. We were trading one problem for another, and frankly we think it's better to address long-term needs in terms of maintenance at this time.

**Fritz:** Why not use colored concrete?

July 14, 2011

**Knudson:** It represent as whole other problem. The way the coating is applied is actually sprayed on in horizontal layers and they keep going around and around using a process called shot crete. It requires a lot of different batches of concrete as they continue to spray on the concrete moving up the height of the tank. Experience has proven that as you add the colorant to the concrete, any slight deviation results in yet a slightly different color, and so what you will see is essentially a zebra effect of horizontal stripes on the tank with different shades of colors of the same color, and it will always be discolored and that's in the concrete at that point.

**Fritz:** Thank you. That's really interesting. I just wanted to clarify something you said in your presentation about -- about the volume, the size of the tank. I thought you said in your numbers that it would double the width and the same height or a foot higher.

**Knudson:** If you take the volume -- the width of the two existing tanks, each tank is about 46 feet wide. When you double that, it's about 92, right? That is the width of the proposed tank.

**Fritz:** So it is twice as big.

**Knudson:** It is the same width as the two tanks together.

**Fritz:** I see. Thank you.

**Adams:** Other discussion? Thank you, gentlemen. Has anyone signed up?

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

**Adams:** Ok. We will now move to the appellant. Five minutes.

**Dean Smith:** Thank you again, dean smith on behalf of the ash creek neighborhood association. As we testified earlier, we believe that this case boils down to a judgment that you must make about the compatibility of the project with our neighborhood and the residences around it. We believe the hearings officer was wrong in finding the structure is on balance compatible with the neighborhood, and that its impact can be success family mitigated. Nor our illustration about a similar type of storage facility that could not be allowed as an institutional use due to the far standard I think demonstrates our point and we would hope your decision doesn't rest on what is a floor and what isn't a floor and dictionary definitions. But rather what a comparable passive storage use would be allowed or not on this site. We also recognize far is a measure of both scale and intensity, but the examples of a passive storage facility of another type that couldn't be allowed shows that this facility doesn't really meet the intent of the far standards in the code. A couple of other points we'd like to make, first there was no evidence introduced into the record by the applicant or by the other party of another above groundwater storage tank of this size being located on a parcel this small. It simply doesn't exist, and there's no precedence demonstrated in the record for such a size on such a small location. In site size, is one of our concerns in this specific location. Second we believe it's been within council's discretion to judge it as incompatible. Some or even all of the institutional development standards does not convey an automatic finding that the project is compatible if that were the case this wouldn't be a type three process, but a decision that could be handled administratively. We believe that judgment is part of this decision and that that judgment rests with new this case. Third, we do agree with the hearings officer as well as the applicant that council must weigh various factors in reaching your conclusion about compatibility. We recognize building scale and style and size are not the only factors. But the code does not imply that all of the factors are equivalent in weight. That is, one or more factors may be more significant than others and carry more weight in the consideration of compatibility. For example, the fact that the proposed structure squeezes into the site such that it just meets the minimum setback requirements does not mean it is an equally significant factor when weighed against the scale of the structure and its proximity to neighboring residents. Or the fact the style of the infrastructure is a factor incompatible with adjacent residential structures as the hearings officer has found. Finally i'd like to reassert our position that we willingly support a replacement of the existing 1 million gallons of

July 14, 2011

water storage on this tank. We believe that would be a sound decision, and that is new tank would be appropriate for that location. We do want to point out that we did not have an opportunity to meet Tualatin valley water district as a neighborhood association, they did have a couple of open houses, but we never had the opportunity or never requested by the district to meet with us and to have a discussion or consideration of alternatives for this project. I'd also like to point out that need for this tank and its additional size is not a decision factor, nor is the cost effectiveness or lack of cost effectiveness after 2 million tank versus 1 million tank, those are not decision criteria that are relevant to this case. We are well aware the city has permitted water tanks in residential neighborhoods throughout the city, the difference here is the sides of the parcel, the scale of the structure, and the proximity to residential dwellings. We believe the facts we presented and the consideration of the intention of the code demonstrate to you should demonstrate to you this project as proposed should not be allowed. And I would say we would be happy if you find in that sense to continue to have dialogue with the water district we'd like for them if that's the case to meet with us as a neighborhood association rather than having independent open houses as they've had in the past. We respectfully ask that you uphold our appeal and reject the hearings officer's decision. Thank you.

**Adams:** Thank you. Discussion from council? Or do you want to talk to staff?

**Saltzman:** I had a question for sylvia. So the preservation of the sequoia trees on the west, does the bureau of development services have control over that as -- if we were to approve this and the site becomes developed there was some about the -- it's a game-day decision as to how many trees come down.

**Cate:** The site plans that were revised and submitted upon which the hearings officer based his decision indicate an area along the east property line where more than likely some of the trees will have to be removed. It's particularly interesting and this is also in the record and has been discussed, these sequoia trees, as you saw in the pictures, are planted incredibly close together and city forester has gone out, and I believe the water district also had an arborist look at the trees. There was some discussion about whether they could be preserved, and if some got removed if that would impact others because the roots are so intermingled. At one point during the process the district had considered taking a look at removing all the trees and replanting with more space between the trees, which would be to the zoning code standards, but would also give a little bit more space between the trees to help the health of the trees. But meeting with the city forester and taking a look at that and looking what the consequences are in permitting and mitigation for trees, along with the neighbors' input, the trees are very signature trees and the neighbors I believe feel that they are a signature grove, if you will, for their neighborhood, and I think that's a reasonable description of them that they decided to preserve them and only remove a minimal number. So it's my understanding that the site plans that were submitted as essentially your worst case scenario, that that amount, that gap that's being shown on the east property line would be quote the worst case scenario and hopefully during construction more than those trees could be saved, potentially, but it would be on -- in the field decision.

**Saltzman:** Thank you.

**Adams:** Further discussion? Motions?

**Leonard:** I'd move to deny the appeal and uphold the hearings officer's decision.

**Saltzman:** Second.

**Adams:** Discussion?

**Fritz:** I am very concerned about this issue about the interpretation of the floor area ratio. I believe it's intended to address intensity of use in any zone that is used and that's why it's on in this residential zone with this institutional use. The far is supposed to address the mass of an object,

July 14, 2011

and we don't -- it's a definition of it doesn't consider any floors that are below grade more than four feet below grade because it's supposed to look at the height and scale in relationship to the site and relationship to the proximity. So allowing the far to constitute any height up to the height limit of the zone doesn't seem to implement what we have fars for. Which is to manage the intensity and therefore the scale. And it addresses the approval criteria of the massing of -- and the size of this facility. With the interpretation of the code as it stands, any height could be achieved as long as it's only one floor that's on the floor below. And I don't think that's correct and I think we've seen in the illustrations provided that it results in a structure that is not compatible with the neighborhood.

**Adams:** Further discussion? Karla, please call the vote on the motion.

**Saltzman:** I'm going to support the motion because I do feel on balance this proposed replacement storage tank is compatible with the neighborhood. And therefore I support -- deny the appeal.

**Adams:** We're supposed to vote.

**Saltzman:** I'm voting aye.

**Leonard:** I think the argument on the far may have had some weight where the existing tanks significantly smaller than what is being proposed. But essentially what's being proposed is but for a foot exactly the same height, and basically the same width. And I think that the district has met its burden, and I vote aye.

**Fritz:** I believe the approval criteria are not met in finding that the site -- the proposal is not compatible with adjacent residential development based on the site size, the building scale and size, and the setbacks and landscaping. Another point that wasn't fully discussed is it's moving closer into the center of the site and more visible from the street. No.

**Adams:** Both sides argued very effectively, but since we sit as judges I have to weigh by the facts against the state law, and I believe that it meets the letter of the law, and so I will support the motion. Aye. [gavel pounded] we're adjourned.

At 4:20 p.m., Council adjourned.