



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 14TH DAY OF JUNE, 2000 AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Sten, Presiding; Commissioners Francesconi, Hales and Saltzman, 4.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Harry Auerbach, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Item No. 838 was pulled for discussion and on a Y-4 roll call, the balance of the Consent Agenda was adopted.

***829** **TIME CERTAIN: 9:30 AM** – Contract with Sergeant's Towing, Inc. for towing, storage and disposal of abandoned vehicles (Ordinance introduced by Commissioner Francesconi)

Disposition: Ordinance No. 174546. (Y-4)

S-830 **TIME CERTAIN: 10:00 AM** - Amend Parks System Development Charge Code to modify the way qualified public improvement credits are defined and administered (Previous Agenda 516 introduced by Commissioner Francesconi; amend Code Section 17.13.020, 17.13.070 and 17.13.120)

Motion to accept substitute Ordinance: Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.

Motion to accept the amendments: Moved by Commissioner Francesconi and seconded by Commissioner Saltzman.

Disposition: Substitute Passed to Second Reading as Amended June 21, 2000 at 9:30 a.m.

CONSENT AGENDA - NO DISCUSSION

831 Cash investment balances April 26 through May 24, 2000 (Report; Treasurer)

Disposition: Placed on File.

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832 Accept bid of Leed Electric to furnish ornamental street light project SW 9th and Park Avenue between Morrison and Salmon Streets for \$116,644 (Purchasing Report - Bid No. 99776)

Disposition: Accepted Prepare Contract. (Y-4)

833 Accept bid of Moore Excavation, Inc. to furnish SW Vermont trunk sanitary sewer for \$2,462,383 (Purchasing Report - Bid No. 99899)

Disposition: Accepted Prepare Contract. (Y-4)

834 Accept bid of Exercise Equipment NW to furnish Mt. Scott Community Center exercise equipment for \$105,043 (Purchasing Report - Bid No. 99940)

Disposition: Accepted Prepare Contract. (Y-4)

835 Accept bid of Oregon Asphaltic Paving Company to furnish Marine Drive contract overlay 2000 project for \$557,000 (Purchasing Report - Bid No. 99946)

Disposition: Accepted Prepare Contract. (Y-4)

Mayor Vera Katz

***836** Amend Contract with Arbitrage Compliance Specialists, Inc. for arbitrage rebate work (Ordinance; amend Contract No. 30160)

Disposition: Ordinance No. 174527. (Y-4)

***837** Authorize the accrual of additional compensatory time to sworn officers of the Portland Police Bureau who were required to work during the Year 2000 Millennium celebration (Ordinance)

Disposition: Ordinance No. 174528. (Y-4)

***838** Approve cost of living adjustments to pay rates for nonrepresented classifications and Elected Officials, specify the effect upon employees in the classifications involved effective July 1, 2000, and provide for payment; create five new nonrepresented classifications, adjust the pay grade of one classification and adjust one pay range (Ordinance)

Motion to delete Section H and make corresponding changes in Exhibit A: Moved by Commissioner Francesconi and seconded by Commissioner Saltzman.

Disposition: Ordinance No. 174547 as amended. (Y-4)

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***839** Contract with Martech Associates, Inc. to complete a classification and compensation study of City of Portland Professional Employees Association (COPPEA) positions and provide for payment of \$73,050 (Ordinance)

Disposition: Ordinance No. 174529. (Y-4)

***840** Pay claim of Sarah Frey (Ordinance)

Disposition: Ordinance No. 174530. . (Y-4)

***841** Call for bids for 2000/2001 fiscal year annual supply contracts for City bureaus and departments, authorize contracts and provide for payment (Ordinance)

Disposition: Ordinance No. 174531. (Y-4)

***842** Agreement between Portland Public Schools and the City for use of Local Law Enforcement Block grant funds (Ordinance)

Disposition: Ordinance No. 174532. (Y-4)

***843** Contract with Multnomah County for services provided by Multnomah County Sheriff's Office to access the photo images in the Multnomah County Photo Imaging CCS-2 server, not to exceed \$160,795 (Ordinance)

Disposition: Ordinance No. 174533. (Y-4)

Commissioner Jim Francesconi

***844** Authorize purchase order with Exercise Equipment NW for Mt. Scott Community Center exercise equipment for \$105,043 and provide for payment (Ordinance)

Disposition: Ordinance No. 174534. (Y-4)

***845** Authorization to apply to the Federal Emergency Management Agency for a \$5,000 grant for a juvenile firesetter intervention course (Ordinance)

Disposition: Ordinance No. 174535. (Y-4)

***846** Authorize agreement for acquisition of the Christensen property adjacent to Stephens Creek in the trails and locally significant local share target areas (Ordinance)

Disposition: Ordinance No. 174536. (Y-4)

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- *847** Authorize the Director of Portland Parks and Recreation to adjust the golf surcharge annually, limited to inflation (Previous Agenda 811)

Disposition: Ordinance No. 174537. (Y-4)

Commissioner Charlie Hales

- *848** Accept one street deed and one temporary slope easement for the SE Foster Road and SE Jenne Road street improvement project, granted by Dale O. Fackrell and Bradley C. Fackrell, authorize total payment of \$34,750 (Ordinance)

Disposition: Ordinance No. 174538. (Y-4)

Commissioner Dan Saltzman

- 849** Accept completion of the NE 162nd Avenue pollution reduction facility, Project No. 5563, and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 32600)

Disposition: Accepted. (Y-4)

- *850** Authorize the Purchasing Agent to negotiate and sign a Purchase Order with Turblex Incorporated for aeration equipment in the estimated amount of \$480,000 without advertising for bids and provide for payment, Project No. 6083 (Ordinance)

Disposition: Ordinance No. 174539. (Y-4)

- *851** Authorize a contract and provide for payment for the construction of the NW Central Business District Phase 4, Unit 1, NW Couch St. sewer reconstruction, Project No. 6125 (Ordinance)

Disposition: Ordinance No. 174540. (Y-4)

- *852** Authorize a purchase order to serve as a contract to Moore Excavation for the NE 42nd and Broadway emergency sewer reconstruction project, Project No. 6839, for \$120,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 174541. (Y-4)

- *853** Authorize agreements for the conveyance of one property from Young Choe and one property from Donald and Susan Walter to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payments of expenses (Ordinance)

Disposition: Ordinance No. 174542. (Y-4)

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- *854** Contract with US West Communications, Inc. and the State of Oregon, Oregon State Police, Office of Emergency Management, 9-1-1 Program for the upgrade of the Enhanced 9-1-1 telephone system at the Bureau of Emergency Communications (Ordinance)

Disposition: Ordinance No. 174543. (Y-4)

Commissioner Erik Sten

- *855** Authorize an agreement with Harza Engineering Company, Inc. for an amount not to exceed \$220,000 for preliminary engineering services for the Dam 2 tower improvements project (Ordinance)

Disposition: Ordinance No. 174544. (Y-4)

- *856** Amend contract with Montgomery Watson Americas, Inc. to extend the contract term through September 30, 2001 and increase the contract amount by \$98,000 for Powell Butte Master Plan (Ordinance; amend Contract No. 29987)

Disposition: Ordinance No. 174545. (Y-4)

City Auditor Gary Blackmer

- 857** Certify abstract of votes cast at Municipal Non-Partisan Primary Election held in the City of Portland, May 16, 2000 (Report)

Disposition: Accepted. (Y-4)

- 858** Declare the purpose and intention of the City to construct a water main in the SW Arboretum Water Local Improvement District (Resolution; C-9979)

Disposition: Resolution No. 35893. (Y-4)

REGULAR AGENDA

Mayor Vera Katz

- *859** Agreement between the Mt. Hood Cable Regulatory Commission, through the Office of Cable Communications and Franchise Management and the Bureau of General Services, Communications and Networking Division, for Community Access Capital Grant (Ordinance)

Disposition: Ordinance No. 174548. (Y-4)

- *860** Contract with Tri-County Metropolitan Transportation District of Oregon, Multnomah County and the City for Multnomah County to provide a Deputy Sheriff to the Tri-Met Transit Police Division (Ordinance)

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Disposition: Ordinance No. 174549. (Y-4)

Commissioner Dan Saltzman

***861** Authorize a contract with Brown & Caldwell for design of revisions to Ankeny pump station, Project No. 5509 (Ordinance)

Disposition: Ordinance No. 174550. (Y-4)

***862** Authorize a contract with Parsons Brinckerhoff Quade & Douglas for professional design services and payment for the West Side combined sewer overflow tunnel, Project No. 6680 (Ordinance)

Disposition: Ordinance No. 174551. (Y-4)

863 Revise residential solid waste and recycling collection rates and charges, effective August 1, 2000 (Second Reading Agenda 793; amend Code Chapter 17.102)

Disposition: Ordinance No. 174552. (Y-4)

Commissioner Erik Sten

864 Declare the City of Portland's intent to create a Portland recovery plan for salmon and trout listed under the federal Endangered Species Act based on a comprehensive framework (Resolution)

Disposition: Resolution No. 35894. (Y-4)

FOUR-FIFTHS AGENDA

864-1 Accept bid of Portland Freightliner, Inc. to furnish fire apparatus for \$1,328,358 (Purchasing Report - Bid No. 99682)

Motion to accept Four-Fifths Agenda: Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.

Disposition: Accepted Prepare Contract. (Y-4)

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

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 14TH DAY OF JUNE, 2000 AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Sten, Presiding; Commissioners Francesconi, Hales and Saltzman, 4.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Ruth Spetter, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

- 865** **TIME CERTAIN: 2:00 PM** – Affirm staff's decision to reject Sideras Construction application for determination of eligibility for the Single Family New Construction Limited Tax Assessment Program, allowed under ORS 458.005 et. seq. and City Code 3.102 (Report introduced by Mayor Katz)

Motion to overrule staff and grant the tax abatement: Moved by Commissioner Francesconi and seconded by Commissioner Hales.

Disposition: Overrule Staff and Grant Abatement. (Y-4)

- 866** Affirm staff's decision to reject Fargo Row Investment Co. application for determination of eligibility of the Single Family New Construction Limited Tax Assessment Program, allowed under ORS 458.005 et. seq. and City Code 3.102 (Report)

Motion to overrule staff and grant the tax abatement: Moved by Commissioner Hales and seconded by Commissioner Francesconi.

Disposition: Overrule Staff and Grant Abatement. (Y-4)

REGULAR AGENDA

Commissioner Charlie Hales

- 867** Tentatively deny appeal, with a condition, of the St. Johns Neighborhood Association against Hearings Officer's decision to approve the application of the Port of Portland for a nine-lot land division (Bybee Lakes) without creation of a street, located at N Leadbetter Road south of N Marine Drive (Findings; Previous Agenda 828; LUR 99-00832 SU)

Motion to approve the findings: Moved by Commissioner Hales and seconded by Commissioner Francesconi.

Disposition: Findings Adopted. (Y-4)

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At 3:35 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

A handwritten signature in cursive script that reads "Britta Olson".

By Britta Olson
Clerk of the Council

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

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Closed Caption Transcript of Portland City Council Meeting

This transcript was produced through the closed captioning process for the televised City Council broadcast.
Key: == means unidentified speaker.

JUNE 14, 2000 9:30 AM

Sten: I think the mayor is off today, and we need commissioner Saltzman to do the consent agenda, so has somebody called after him? Is he—
== round up the usual suspects.

Hales: I haven't heard that much about that one either.

Sten: Does anyone have items they'd like to pull from the consent agenda? I believe 838. Any other items? Anybody from the audience like anything pulled from the consent agenda? Why don't we pause to see if we can get commissioner Saltzman here to vote on the consent agenda. There he is. Would anybody like to—did you want to pull any items from the consent agenda? We've already pulled 838. Can we have roll call on the consent agenda?

Francesconi: Aye. **Hales:** Aye. **Saltzman:** Aye.

Sten: Aye. Consent agenda passes. We have a time certain at 9:30. Do we prefer to take 838 now, or do the time certain—i'm inclined to do the time certain and come back to the personnel. Would you read 829?

Item No. 829

Francesconi: I think this is pretty straightforward. Go ahead.

Jim Wadsworth, Director, License Bureau: i'm here to answer any questions you have about this.

Francesconi: We've gone through our process. They recommend we approve this towing contracted, and so do i. I don't have anything else to say, unless there are members of the public here—what do we call you, mr. President?

Olson: he's president of the council.

Francesconi: Mr. President, that you may want to call on.

Sten: Anybody who would like to testify on this item? Any questions from the council? In that case, roll call.

Sten: Aye. The motion passes. We have a time certain at 10:00. Perhaps we should do 838 at this point. Is everybody here for that?

Sten: Yvonne? We're ready. Could you read 838? Approve the accrual—the cost of living adjustments to pay rates for nonrepresented classifications and elected officials.

Item No. 838.

Sten: This is a personnel ordinance that has four different parts. It was pulled from consent because i'm quite aware there's debate over several pieces of it. So I think maybe the best way to start is if you could describe what each of the four actions and—encompassed in this are, and i'll open it up to public testimony, and then i'll go to council questions. [no audio]

Yvonne Deckard, Director, Bureau of Human Resources (BHR): cost of living adjustments. The second piece are classification issues, classification issues as it relates to the budget that council just passed for the bureaus. So we've added in the new classifications that are in some bureau budgets in order for them to be able to fill those positions. So we have to establish those positions, and we do that via ordinance. Now, part of that—of the classification issues also includes the chief administrative officer position that council voted when we developed the office of management and finance. And so that's a piece of this ordinance. Then the third piece of the ordinance is an adjustment to the fire chief salary.

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Francesconi: Let me deal with the third part. What I was trying to do, there's been—since we gave the police chief a raise, there had been a history, it's my understanding, of parity between the police chief and the—parity between the chiefs for the last 60 years. I decided to not continue with that tradition, I came up with a recommendation of a lesser salary. But putting that into this process maybe isn't the cleanest. So what I would like to do is pull that out, and we can come back to that in december at the time of the—what study is happening in december?

Deckard: we're having—currently we're beginning the non-rep study.

== I appreciate your help in trying to help me with this. But I think that your original advice was sound.

Sten: We'll collect the amendments at the end and so I think we'll probably amend out the piece about the fire chief, and why don't I ask for public testimony now. Is there anybody who would like to testify on this? It doesn't look like it. Let's move back to council discussion. Why don't we start with the issue of c.o.l.a.s? Are we safe in assuming—

Francesconi: Yes.

Sten: Questions about that? I understand—five reclassifications that are in the bureau of budgets?

Deckard: correct.

Sten: Any questions about those? And the final piece is the adjustment of proposed adjustment of the chief administrative officer salary, and do you want to describe that?

Deckard: okay. That's really a classification issue. Once council voted to create the office of management and finance, and changed the duties and responsibilities of the ofa director, then bhr, as with any employee, would go in and look at the employee's classification to determine whether or not the classification is still the same, or needs to change. So when we went in to look at the individual employees, which is classification which is the chief administrative officer, there's no such classification that exists in the city right now called chief administrative officer. So we have to establish that classification in order to place the individual at this time in that classification. So this allows us to create the classification, and the compensation level for that classification.

Sten: Questions of the council?

Francesconi: What are we going to pay? What's the salary?

Deckard: it's a pay grade 19, is where the position is classified at.

Hales: That makes sense.

Francesconi: How much is that? What is the amount?

Deckard: the range currently I think is a range of \$94,000 to \$132,000.

Francesconi: Who else—give us comparisons. Who else is at 19?

Deckard: the chief of police is at grade 19.

Francesconi: So it would put him at the top.

Deckard: that's the pay grade you put him at. Now, his ability to negotiate his salary within that range is an assignment issue. So what we're doing is establishing the classification and the pay grade for that.

Francesconi: Okay. Thank you.

Sten: I do have a question, maybe it's a question, maybe it's a comment. I don't have any argument that the new job is a bigger job. It's two departments, where there was one department. I guess my comment or question is, why the need to move this now when there's no organizational structure for this department? I would feel much more comfortable about making a statement that we're raising the pay if I understood what the management team looked like over there. What I mean, i've gotten a memo saying for the time being, we're going to appoint on an interim basis essentially a director of what was general services, but not on a permanent basis because we don't know the management number. It seems to me—i also would feel very comfortable that whatever

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the grade of pay becomes, it should start on July 1st, even if that means retroactivity. But I feel like there's an argument being made that council voted to increase—create this office, therefore, one person should get more pay, but the role—the vote to create the office was to save money and consolidate things. I don't see any plan whatsoever for a management scheme. And I would be more comfortable changing grades in the context of a management scheme than doing one. So why wouldn't we ask for that from the bureau before we change one job?

Deckard: you're talking about a performance issue. So what you're asking for is for the individual that is performing that job to provide a performance plan to show council, one, how the job gets done, but that's not the same as a classification issue. A classification issue, commissioner, is when I know that I've changed the duties and responsibilities and expanded them out for an individual. That changes their classification. Once council voted to create this office and consolidate, you placed other bureaus, you expanded the duties of that individual. So that means that we then go in and we look at the classification. Is the classification the individual currently is placed in, is that appropriate? Once you create a in you—new classification, you have to create a new level of compensation for that. So really, those are two different issues.

Sten: I understand the distinction. If the proposal comes back to have the exact same number of managers that the two departments currently have, but raise the pay scale of the top one, I'm against it. Because I think we've then increased cost without decreasing any management layers. So I—the reason I think he should have more money is because I think he's going to take more on, but I don't really know practically, yes, on paper he's got more, but what the scope of work looks like until I see what the management structure looks like. It seems to me the cart is before the horse on this.

Deckard: you've already expanded, for example, not only his duties, but his span of control. For example, you may still have a bgs director, but the chief administrative officer, that person is now reporting to that bgs—the director is now reporting to the chief administrative officer. So the chief administrative officer's duties have been expanded, because now they're responsible for this new function, this new office, this new individual that they now—

Sten: Maybe I wasn't clear in my vote. If what this reorganization does is creates one more supervisory layer, I think we've made a mistake. What you're saying is even if you have the same amount of managers, now they have one more person to report to, so that person should get paid more. And I need to see the org chart before I decide what somebody's how can I know what this bureau should look like without seeing what it is? There's no proposal for what the team looks like.

Deckard: let me try to take a different tact to explain it to you. Let me use an example. Optr. Once you took the building, the bureau of buildings, you expanded it by adding a new responsibility, you consolidated part of planning in that. It expanded the line of authority and the span of control for that bureau. We went in, for example, and we had to look at the classification of the bureau director, which was Margaret Mahoney, and we reclassified her position at that point.

Sten: After two years of study, when I had a blueprint in front of me saying what the new organization looked like, I think he's due the money as of July 1st, I just think—whether he should be 19 or—this is going to—this is exactly like the police chief. Now we're in a situation where we raise the police chief salary without any study, and then we come to the point of view that the fire chief's pay needs to go up. It's inevitable the number 2 in OFA is going to be deserved a raise as well, because their position—I need to say the overall pay structure before I can decide what grade is the right grade for him to have.

Hales: Let me be a little more general, Yvonne. I'm uncomfortable about both of these provisions not because the work being done doesn't warrant the pay, but I think we have a potential here that we're going to be playing hospital scotch, and where executive compensation is being managed ad

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hoc rather than systemically. Not your problem, it's our problem. And jim, I don't disagree with your reaction to the police chief's salary to address that with the fire chief's salary at least in part, but I think it's a question of, when do we blow the whistle and say, time out, let's get this—let's have the pay for our executives be a rational orderly process, rather than getting—reacting to the last change, or reacting to a change that's only been partially affected. I think you in effect made erik's argument when you described the difference between what happened with opdr and the office of management and finance. We knew exactly what margaret's knew duties were going to be and what was going to happen to the shape of the organization and the number of positions. We don't know that yet with the new finance office, and I understand that's a work in progress. But I guess I have a sense, and the reason I haven't been terribly articulate about my discomfort, I have a sense this is slipping away from us and we're doing this by ad hoc, rather than by any kind of plan or policy-based approach to these executive salaries.

Francesconi: Let me see if I can help. I agree with you on the fire chief. That's why I pulled it. I think it should be done in december as part of a study. Now, this one is a little bit different. So help me make sure, and yvonne, help me if i'm on the right track. I agreed with what commissioner Sten is saying, that we need to see an organizational structure, number 1. I also agree that the idea is to save money, not to increase money. I agree with both of those things. And those things need to happen. And we need to see that. Where i'm not so sure is, I think the question is, is the vote to reorganize the correct vote, not, is his salary the correct salary. That's where I think I disagree with commissioner Sten. So we need to see all those things to make sure that we did the right thing in what is still a temporary move. But if it's not going to save money, i'm not for increasing his control just for the sake of increasing the span of control and costing more money. I think when we made that vote, I think we had the effect of increasing his duties immediately. So that's the problem. So we're kind of holding his salary when I think there's actually larger issues to hold than just his salary.

Deckard: the issue is that you have—you did increase his duties. And we had to go out and look at what would be the proper classification for this individual, as we would any individual when the city has said, we're now changing your duties. We're obligated when we change an employee's duties to look at their classification and their compensation. Now, we do that and we classify the position, and that person goes into that. If, during the course of the restructure, the reorganization, if council was to come back at some point and say, you know, this consolidation doesn't work, and now we need to have a different structure, then that would drive us looking at the classification again. Because you're now changing an individual's duties again. So any time we change someone's duties significantly, we go back and we classify them, whether that's utility worker or a chief administrative officer.

Francesconi: Let me ask a procedural question. If we voted no, or—on one of these, would that have the effect of slowing down the whole thing? See what I mean?

Deckard: as far as the ordinance is concerned, you can't pass the ordinance unless you all agree on it. So if there's—if you want to agree on part of it but not all of it, you'll have to amend the part you don't want to—to delete the parts you don't want to agree on from this ordinance, and send them back. And pass the rest. Or else the whole thing will fail.

Francesconi: You need this to take effect right away, too. You need a unanimous vote on the rest of it.

Deckard: right. Because we're trying to implement this effective july 1st. So we need time in order to, you know, do the classification changes, in order to, you know, give the employees their cola adjustments. So we wouldn't wait until july 1st to pass the ordinance.

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Francesconi: The options are for all of us to agree now that the fire chief has been pulled out to this, and then say, so—I guess to the mayor, it's her portfolio, that we want to plan with some specifics as to organizational structure and cost savings in order for this to continue, or else we're going to—we could reverted back to a prior structure and tim's salary would go back down. We could do that, or we could just peel out this portion.

Deckard: correct.

Francesconi: And vote on it. I guess president Sten, it may be up to you, and commissioner Hales.

Sten: I think you've articulated it well. I think everybody has more or less the same ends in mind. I think there's agreement— commissioner Francesconi will pull the fire, so I guess let's have discussion on the chief administrative officer's salary and where people are at.

Francesconi: I think the point is made. I think we've increased the duties and I think we should give him the money now. But we should request this overall plan. And we should reevaluate this thing. Based on the concerns of commissioner Hales and president Sten. That's what I think we should do.

Deckard: I think that will work. We have made a substantial change in the nature of the job. That change may be a good thing, or it may not have been. We've—we have to revisit that, ask the mayor to come with come in with an administrative plan with this new organization and reevaluate that. That's a different animal than the situation with the fire chief or anything else that we've provoked by other salary changes in our executive ranks.

Saltzman: We've made the decision to go ahead and create this department, but i'm comfortable waiting with the salary issue until we have a plan in front of us, as long as it's retroactive to july 1st.

Francesconi: You're comfortable either way?

Saltzman: Yeah.

Francesconi: It's up to you, president Sten.

Sten: My preference—i've been upset about the way the city is approaching compensation, particularly during labor negotiations since the planning director and chief of police, which I did not support. Now that we've made a decision that an officer makes as much as the chief of police, i've got to know what we plan to do for the people right below them, who now on the same theory are out before I can know whether this makes sense. I don't know how many employees he's going to supervisor— supervise, so—i'd like to see the org chart if there's a strong will of the three, so i'll push on mr. Saltzman, i'm not going to hold it up.

Saltzman: I'll wait to see the organization chart. Then we can make the subsequent decision on the salary.

Hales: Can we get somebody to indicate roughly how long that might be?

Sam Adams, Mayor Katz' Executive Assistant: sam adams, from the mayor's office. The issue of just a couple of points. Tim's responsibilities were expanded beyond simply being the supervisor of a consolidated bureau, bgs, ofa and purchasing. He was also given citywide responsibilities to evaluate all the administrative services on an ongoing basis and determine recommend to you as council the best way to proceed in terms of citywide issues. I know in the few short weeks that he's had these responsibilities he has already had a number of issues come up with the police bureau, and a variety of other agencies within the city that he is having to look at and determine whether what the bureau wants to do makes sense vis-a-vis the rest of the city. So I know his duties and responsibilities you gave him he's already having to exercise those duties and those responsibilities. So I would just ask that you also keep in mind it's not just the consolidated, but also the citywide responsibilities that have increased immediately. In terms of the consolidation and merger of purchasing, ofa and bgs, I think that that work is just beginning. We

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had to get through the budget process, which occupied a lot of tim's time. Completing the civic stadium deal, which occupied a lot of his time, and also looking at the transition in bgs, david kish resigning and ron bergman coming on. So those things having—being completed have really I think tim has said he's going to—wants to sit down with council within the next 45 days, as promised, and go through the work plan. But the changes—there are also—I'd also ask you to look at the fact that in addition, council also made other changes to those three bureaus, and they have 5% cuts that they're having to implement. Those are significant organizational challenges. That tim will have to ride herd on. They're also cuts throughout the city that will have, you know, some impacts between the relationship between the central administrative service bureaus and the operating bureaus that he's going to have to make some judgments about. So I think he's—we wouldn't have brought this forward if we didn't think his responsibilities had increased significantly enough immediately. We thought they had, and that's why this was included in this ordinance.

Sten: What about the issue of top important managers right below him? What happens to their salaries?

Adams: we make no assumptions by increasing his salary what the salaries of the people below him should be. We've been pretty clear with him and clear with all of you that we expect that the office of management and finance, the combined agencies will likely look very different within the course of the year. And I can't tell you whether there will be—whether there will be a bureau of general services, a bureau of purchasing, or how it will be arranged. I know tim is looking at it with a very open mind, so we don't assume there will be any salary creep in the bureau managers under him, or where those bureau managers might be within the next year.

Sten: Is it reasonable for me to—I'm on the record now—expect that overall compensation is less in a consolidated department than it is—or more, or the same? What should I be expecting?

Adams: I think it would be our expectation that overhead, management overhead would be less in a consolidated agency. Whether—I can't—it would be—not knowing enough, I don't know that I could answer fully what the issues of compensation would be. I know that it's tim's goal to flatten out the organization as much as possible.

Sten: I guess—yvonne, every time these come through, and I understand the reasoning, there's an argument that doesn't have an effect. As I read our executive packages, everything is ranked both in relationship to what other people in the city do and to what we consider comparables to do. How does this not have—how do all these raises we're doing—they seem to me to have the effect I thought they'd have in january.

Deckard: when we do compensation, we look at both internal equity as well as the market, which is external equity. And so—but we don't assume that by raising one person's salary that another person under that individual automatically goes up. We are in the process of doing a nonrep study where we're looking at executive salaries. We haven't looked at the executive salaries for a little bit over ten years, so if they go up, are they going up because it's been so long since we've been out in the market and that's what the market is bearing, or is it a result of what's happening internally? Probably it will be a combination of both. But right now we can't—I can't anticipate or tell you what that will be. When we look at the executive salaries currently, it will be based on what people are performing, flair performance, their areas of responsibility, as it stand today. And so we don't know what those will look like.

Adams: we view it fundamentally that tim's responsibilities have changed, and that's why his salary should be increased. If the bureau—minus the study, the bureau managers underneath him's responsibilities today have not changed yet, so I don't see any impact on their salaries needing to be taken into account for. I don't see it as an automatic creep, I understand that's the concern, but

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unless—this is my own personal view—unless their responsibilities change, I don't see yet a reason to evaluate their salaries.

Deckard: and they would have to change significantly.

Sten: I'm—i'm of the mind-set that—and have been all along, that this new bureau is a good idea. I think it's reasonable that tim gets paid more because he's being asked to do a lot, i'm just very concerned about sort of the methodology we're using across the board, and this is getting caught in the cross fire of that. It's not a—i'm also on the record saying, you know, whatever we give him, if we don't give him today should be retroactive. So it's not a huge deal if we move forward on this. My concerns are clear.

Hales: I guess I hear sam's argument, and—in that we have created at least as of today, we've put extraordinary responsibilities on this position. Try to make this fusion of three bureaus work. That extraordinary duty started the day we authorized that work to be conferred on that position. So I guess I had less trouble approving that salary change now with the understanding if this thing doesn't work, it's got to be undone.

Deckard: that's your prerogative.

Sten: I won't—never say I won't be flexible. I'm willing to do it if that's the way commissioner Saltzman thinks.

Saltzman: I—like I said, i'm totally comfortable if you want to wait 45 days, whatever, have a chance to review the new organizational plan and then make a decision on tim's salary, as long as it's retroactive, when which you said, i'm comfortable doing that.

Francesconi: I guess—

Sten: The reason i'm willing to move forward today, I think i'm—it's deference to the mayor. It's her bureau. I want to be clear, I am not—you're going to have a real problem with me if we don't justify down to every nickel and what this new executive compensation—we have a very aggressive cost of living approach. We have very low turnover. I have never hired a bureau manager in my six years with gretchen we hired one, I think, maybe two. I don't see a problem with retention. I don't see unhappy employees, and I see executive compensation going faster—up faster than line workers. And i'm not happy about it. I buy the argument that tim's doing more work and if the mayor would like to go forward today, i'm willing to do it. I think the problem is, i'd rather see the org chart, but then all i'm doing is creating a crunch to create a chart to get what he's do. I want to see—i want to lose a couple managers by consolidating. Nobody in particular. But otherwise, I think we've added span of control.

Saltzman: This discussion highlights all of our continuing interests in this new entity, office of management finance, along with all the other assignments tim has been given. We want to be closely involved with not only the formation, but the implementation of this. And we—it's important. A very important decision we made.

Adams: you all will need to be involved in a deeper level than you've ever been involved before in terms of administrative services for the city. He and other managers and workers in the city not only have to take the 5% cut that will begin on july 1st, but they have to begin immediate preparations for the second 5% cut across the city. So there's a lot of work ahead of us in this area.

Hales: We've all been doing thinking out loud, me worst of all. One other thought I have, I think it sounds like we are going to move ahead with that. I think that's appropriate too. I don't want to send any message to the bureaucracy that we're not serious about this change, and that we're not giving tim full support for the work, the difficult and unpopular work that we've asked him to do. And if holding up on the salary in any way sent that message, it would be a bad bargain. We would have lost a lot more money than we would have ever saved. I'd rather say we mean this, went to

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do it, we're serious about it, we expect some things in—but go, tim, do the work, and you have our sport. Support. I think the salary is a piece of that.

Sten: I think we have a consensus. I'm going to ask for a motion on the fire chief.

Deckard: you want to move to amend the ordinance to delete section h and make corresponding changes as necessary in exhibit a.

Francesconi: That's what I want to do, which means taking the fire chief out of this. So move.

Hales: Second.

Sten: Hearing no objections, the motion passes. I'll ask for a roll call on the remaining ordinance 838 as amended.

Francesconi: Thanks for your work on this, yvonne. This is the right thing to do. The only thing i'd say additionally, we're employers, and as employers we have a responsibility to pay people for what they do. Try to pay people what they're worth, although in the private sector I think they could make more money. I think it's very important that we remember that we're asking our people to do a lot. And it's only fair that we pay them for that. Aye.

Sten: Aye. Passes. Back to our time certain at 10 o'clock. Could you read 830?

Item No. 830.

Francesconi: Hello, mary anne. Pete, why don't you come up too. This is the lawyer who's worked with us a lot on this issue. The parks sdc is something I personally am very proud of, and we all should be proud of. We have a fund for \$40 million that we can use to really help improve our park system. And this system development charge has done that for us. In particular, we have a park now in the parkrose district, community park as a result of this fund and the bonding of this fund, and that is terrific. And we're—we have our eyes on three more in east Portland, which is very partial deficient as a result of this fund. In the course of this, we set up a citizens committee to watch it, because this was new for parks, and they made some—they—we helped learn from some past issues. I guess the other thing I want to say is, we also are going to have some terrific parks in the river district as a result of the development agreement and these are going to be great parks, produced for the citizens, contributed to by the citizens, but also with the cooperation of homer williams and the river district. These are going to be great parks. In the course of these discussions, there's some amendments that need to be made to the parks sdc. And i'm going to just sum rise what they are for the council. I think we've—we should have given you copies of what i'm about to say. Summaries. Here's what they are. The first is that we're going to change the definitions of qualified public improvement, and pete is going to explain this, and mary ann n. More detail. What we want to do, to relieve any confusion about the effective sdc's, if there's a development agreement, it will have to be covered expressly in the development agreement, or there will be a parks sdc. So that's one of the changes that we're making. And you folks correct me if I make any mistakes. The second change we're going to make is, if it is mentioned in the development agreement, that the value of the property will be established at the time of the development agreement. Not later. As a result where public improvements could escalate the value of the sdc. So that's the second modification that's in front of you. The third is we're going to eliminate the ability to transfer sdc credits where—in other words, if you get a credit, you could sell it to somebody else. We're going to eliminate that. That's the third loophole. Nobody's tried to do that, but I want to stop it ahead of time. The fourth is that we're going to approve—this isn't really something different, but we're going to approve some projects here to allow that innovation of a capital set aside for low-income housing. We have a mechanism, and this amendment allows that to go forward. And then the last, and this is something new, we're going to propose an—and allow an enhanced maintenance to be eligible for a qualified public improvement only in the central city, and only if approved by the parks director where the parks

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director decides that enhanced maintenance over time is better even than more capital. The reason for this last one is this last budget discussions, frankly. The subject of, we continue to build new parks in the central city that we have to maintain at a higher level, drains money away from the neighborhood parks. This last budget, there was \$500,000 of new maintenance just for new parks in the central city, at a time we're struggling to maintain neighborhood parks. The point I want to emphasize is director Jordan will have absolute discretion to make the determination as to whether new capital in a central city is preferred to enhanced maintenance in the central city. That's the last point. So these are the amendments that have been laid out here. Now let me turn it over to Mary Ann and Pete.

Mary Anne Cassin, Parks Bureau: good morning. I'm Mary Anne Cassin with parks and recreation. Jim did a good summary of the main points, so I won't dwell on those. The other big picture item to share is that we consider these refinements. A lot of them are minor housekeeping things, such as giving the review committee 60 days instead of 21 to look at credits that come through. The whole thing is looked at, is going to be looked at in a more comprehensive way, though, as we start our two-year biennial update. In fact, rfps are due today. It will not only look at the whole methodology, it will also look at how land prices have gone—the fund—will the fund actually produce what it said it will. We're looking to put together of the background work on pursuing a nonresidential sdc. So those are the bigger picture other things going on. There are two very minor word smithing that happened that I believe commissioner Francesconi has, and it will pass out, they're just minor word changes, inserting the phrase "real property interest" and changing an "and" to an "or."

Sten: Questions from the council?

Hales: I just have a mechanical question. I hadn't focused on the innovation here of allowing the direct—parks director to say, we'll take funds for enhanced maintenance in lieu of funds that go into a capital fund. I assume that's still a one-time transaction?

Cassin: yes.

== yes, it would be.

Hales: And have you and Opdr figured out how this is going to work in practice in terms of how the permit process is going to know, or maybe it wouldn't—well, they're going to pay the same amount, regardless of the disposition of the funds. So that's a post building permit counter financial thing, not a transaction that changes at the counter. They're still going to pay x dollars for this project, and parks sdc is just the disposition of the money that gets determined by the director.

Cassin: exactly. Up front they would be assessed the same fee. If they want to work out a different deal, it would happen after the permit process.

Pete Kasting, Senior Deputy City Attorney: as part of the mechanics of this, if the parks director chooses to accept enhanced maintenance in lieu of capital, one of the requirements is that the net present value of that enhanced maintenance be determined at the time the credits are allowed.

Hales: And that's only going to be done in the indication—in cases where there's a development agreement, or elsewhere as well?

Cassin: it could be done elsewhere.

Saltzman: It's only in the downtown area?

Cassin: we're starting it that way as a pilot project. This is pretty brand-new. We want to see how it works. That's where the biggest need is that we're aware of at this point in time. And so we're going to try it out.

Saltzman: They could relate to an sdc project anywhere mt. City, correct? I just—

Francesconi: Only in the central city.

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Saltzman: If you're paying an sdc in the central city and the parks director has the ability to determine its higher uses, maintenance as opposed to— okay.

Cassin: correct.

Hales: And you've gotten this worked out with opdr overall? Terms of how—in terms of ease of administration? It sounds like there would be other—there would be more negotiated fees—

Cassin: I don't think lit affect them that much. I think—as the other credits will happen, lit happen after the permit process. They would defer their fees and then all this would get worked out.

Hales: Oh, all right. Okay.

Francesconi: I'm just reading something that was just handed to me. Mike is here, he's going to testify. I'd like to deal with it even before he testifies. This doesn't mean you can't be still opposed to it. He suggested another sentence be added on this issue of long-term maintenance.

Which is—which is, it just clarifies the intent. It would be under section—

Cassin: directive E?

Francesconi: Yes. He suggested the adding of a sentence, and I actually like it. That sentence would be, such enhanced maintenance shall be evaluated in the context of the overall needs of the city's park system. So it's just clarifying, giving guidance to the park director to make sure it's in light of the overall needs of the park system. I think we should add that phrase. We can have testimony on it. I'll take care of it at the end. But I think it's a good thing to add.

Sten: Let's take public testimony. Has anybody signed up to testify?

Mike Houck, Audubon Society of Portland: my name is mike hauck, i'm representing the audubon society of Portland. You've already dealt with the—the only concern I have, actually you've got language in there that does specify that the parks director should be the one who determines whether it's in fact an interest of the parks system as opposed to the fact that somebody may want more enhanced conditions in their particular park in the central city. So I think you've addressed that. I suggest that only as an alternative. I appreciate your accepting that in the spirit it was offered, which is just, we want to make sure since this program, which is really a pretty amazing program, we're really pleased to come—see it come to the point it has. We took a tour to see some of the sites we're looking at. It's exciting we have the money to buy these community parks, and we hope additional—i'm here to support the program. I think it's great. I was pleased to hear you are moving on the nonresidential sdc's. We've been supportive of that all along and look forward to working on that as well. So good job.

Sten: Any questions? Would anybody else like to testify?

Hales: I do have another question for staff.

Sten: Is there any more public testimony? Come on up, sir.

Steve Janik, for Hoyt Street Properties: my name is steve janik, and I represent hoyt street properties. I was just on the phone with homer williams, the principal on hoyt street, who is on his way over to talk to the council about this. He just became aware of this yesterday. I don't know if it's possible for you to wait a few minutes for him to get here and have the opportunity to hear his comments.

Francesconi: Do you know what his concern is?

Janik: commissioner, as he expressed to me a few minutes ago, he felt that he had just learned of this yesterday, the mechanics of the maintenance credit are not at all clear from the ordinance. It's a matter of him not understanding in the short time he's had this how this is really intended to work in light of some expectation that's he's had in discussions with the parks bureau in the past on this subject. So any brief pause would be welcomed.

Sten: I suppose i'll prefer defer to commissioner Francesconi. It's published, and—

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Hales: I have a question for staff anyway.

Sten: Why don't we continue with the hearing and see if he gets here. We'll certainly have him testify if we're still going. And maybe anyway. We'll see.

Hales: This may be for you, jim. I want to hear more about the eliminating the transfer of sdc's. I've gotten a little out of the arcane discussions that have gone on between local government and the community over the last few years about whether—regardless of whether it's for parks or anything else, whether credits should be transferable from place to place or project to project. Tell me more about your rationale for why you don't want to have that option here. I can't even remember if we have 90 transportation or not. This is down to a level of detail i'm a little unfocused.

Cassin: actually, you did have it in transportation. We followed the lead there. And it hasn't been a problem so far, but we are concerned about the generosity of it. The state statute says that you have to allow it for subsequent phases of development, and we are still doing that. But given that what our ultimate goal is is to have the most money in the sdc pot as possible, if developers are able to sell this or give this away we're afraid of the foregone revenue over the long haul being not there. So the idea is, it hasn't been a problem so far, but we're frankly worried about it.

Hales: But you don't get into this pickle involuntarily, right? The scenario—the reason I think you would want to have the credits, you'd you've got a developer developing projects in more than one place in the city. On—at one project the developer says, how would you like this plan for a park? And the park director calls ball and strikes and says, yeah, I like it, or no. If the park director says, yeah, i'd like it, and the value of that property is more than the sdc's that would be produced by that project, and if part of the deal that the developer envisions is that I get to, you know, use up some of this credit somewhere else, again, we have I think we have control over whether that agreement is ever made or not, right? We can't have people throwing land at us that we don't want, so we set it up from the beginning that we don't have to take donations in lieu of sdc's and give people credits. We get to have a qualitative screen for whether we want that land or not. But if they want to give us 100,000 dollars worth of land on a project and they're only going to generate \$50,000 worth of credit and they expect to get 25 or \$30,000 of that burned off on some other project, why wouldn't we want to have that option? That's what i'm not tracking here. I think we have control over whether we ever do those kind of agreements or not, but back to the—my memory is kicking in on the theoretical work that we did on crafting the sdc statute in the first place. That was the scenario we envisioned when we created credits in the first place. It also happens in transportation. You've got—somebody wants to build a project, we might require them to do a half street and they say, that's going to look ugly. We'd rather build the full intersection. But it going to cost \$400,000, and this project is only going to do \$150,000 worth of transportation sdc's. How about you give us half or more of that balance as a credit for somewhere else in the city and we say, okay. So we get \$450,000 worth of street construction for \$300,000 in sdc credits. Good deal for the community, the developer gets a project with a nice street, everybody wins. So as long as we have the control over when that happens, and not have people building streets that we don't want or giving us land we don't want, I think we want this authority. So argue with me, tell me why we should spank our own hand and say no, we're not—

Francesconi: Do you sell the credits in transportation?

Hales: Do we?

Francesconi: That's a question.

Hales: She says we do.

Francesconi: My intent is to stop the sale of the credits, not necessarily allowing credits for the same person. What is the language—what does the language do?

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Cassin: this language says that credits—excess credits are available for subsequent phases of the original department, but they could not be applied elsewhere. That's what it does.

Hales: So it has to be the same project.

Cassin: subsequent phases of the same project, which is the statutory requirement.

Saltzman: That's not how we do it with transportation.

Hales: Washington county was more generous in their sdc credit for just that reason. They wanted the developers to build the streets because it cost less and there's an economy of scale. So once it was a street they wanted anyway, that's the key, is this a street we want, yeah, it is, you're build can the street to our standards. So go, keep going, build as much street as you can make in the project, and we'll give you sdc credit. So that got transferred into other sdcs around the state as they've been implemented. And as long as we have the qualitative control saying, yes, we want this street or this park or water line or whatever it's for, then we get a lot of --.

Francesconi: Well, you're raising a valid point. Here's what I would suggest if it's all right with you. We need your advice on this, but I would rather err on the side of being conservative. This is an evolving approach. Since nobody's really asked us to do this, we're not stopping an opportunity that i'm aware of. So if we could go with this language, but then if we could talk, commissioner Hales, and get better experienced with transportation, we're willing to come back with an amendment.

Hales: These come along once in a blue moon. I don't want to hold up the ordinance, but the trouble is, when this offer comes in the door, if you have to change the code in order to accept it, you know, that's one more reason why I probably can't—it can't get done timely and the agreement never happens. So I think if you ever want to do this, you have to leave the door open and, again, it doesn't happen very often. I don't know how off then happened in transportation, if it has happened at all yet.

== I think it's very rare.

Hales: But i've seen it happen actually with parks in other communities, where they got the yes, on, okay, i'm going to give you \$250,000 for the land, but i'll get 120 on sdc credits on—credits on my next project, and i'm willing to do that because it makes a nice project, and i'm a nice person, whatever. You don't—you can't regularize this. You've got to leave the door open for them. If you want to. I think we want to. Do it later, not at all, but i'm certainly willing to vote for what you've got in front of us, but you might want to reconsider slamming that door. Once of those days you might want to walk through it.

Francesconi: Thanks for your advice and your willingness to go with this as we look at your advice.

Sten: Any further questions for staff? I guess we've—mr. Williams is not here, unless i'm missing it, so we've got a choice to postpone the hearing and move on, or—

Francesconi: No, I don't—

Sten: Or take a vote.

Francesconi: Here's the status for the council.

Sten: I guess we can postpone i'm saying until late they're morning.

Francesconi: Let's do that.

Sten: Give him a chance to testify since we know he's coming. I don't know procedurally what we need to do to put this on hold and keep on to the agenda.

Hales: Just close the hearing on it and reopen it later.

Sten: I'm going to close the hearing on item 830 and revisit it later in the agenda. We'll take a vote later in the day. Could you read item 859?

Item No. 859.

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Nancy Jesuale, Communication Services: good morning. This is to accept a grant of \$280,000 from the Multnomah cable commission. It's going to allow us to place the first open internet portal on an at&t system if we can beat boulder. And it's going to help us integrate a very large network into our erni plans and extend our network further into the community.

Sten: Terrific. Any questions from the council? Any public testimony on this item? Chuck, could you grab commissioner Francesconi? We're going to make you work today. It's an emergency ordinance. Roll call on 859.

Francesconi: What is it?

Hales: A cable grant.

Francesconi: Yes: Absolutely:

Sten: Terrific. Aye. thank you very much. How about 860. Do we have a presentation on this? Any public testimony on this item? Roll call.

Sten: Aye. It passes. 861. Any presentation? Mr. Saltzman?

Saltzman: Did you want a presentation? Yes, we do.

Sten: Come on up.

Item No. 861.

Paul Gribbon, Bureau of Environment Services (BES): i'm with the bureau of environmental services. You've got two significant engineering design contracts, 861 and 862. I just wanted to briefly bring you up to date on the status of the combined sewer overflow program and talk about what will be coming up. I think you are aware we're very close to completion of the columbia slough. We expect to be done ahead of schedule. We've also started the west side sh csl program with the tanner creek project which came before council a couple months ago. Over the next six months we'll be wrapping up to do more of the west side program. The two contracts we have today is for the revisions to the ankeny pump station at the foot of the burnside bridge, and the others in northwest combined sewer overflow tunnel. It should be very similar to the tunnel we just completed on columbia boulevard. Both of these are scheduled for completion by december of 2006. During the summer we'll also be back with other contracts as part of the program which would include environmental oversight, value engineering, additional phases of tanner creek, the northwest csl pump station, force main, and the improvements that will be necessary to columbia boulevard treatment plan in order to deal with the csls in the willamette river. Due to the large number of projects we have and the inner section between them all, we have developed a willamette management plan which is similar to the one put together on the columbia slough program. Two pieces of the management plan include a contract with the office of neighborhood involvement, and the purpose of that contract will be to conduct outreach and site visits to impacted residents and businesses along the route of the west side csl program, provide information to and solicit input from the public. We want to summarize the input so we can use it during the design process, and we also want to develop partnerships to leverage city resource and gain poorer public participation in these projects. The other piece of the management plan is the community benefit opportunity program, cbos. Right now we've estimated about \$1 million to put into the cbo program. As the projects move forward, the community—the communities most heavily impacted will have an opportunity to recommend a project. We'll have a work group of citizens and staff to evaluate the proposals and the projects will be reviewed and approved by the city council. So the two contracts today are for engineering design of the west side cso tunnel which will include engineering design, geotechnical work, environmental assessment, historical reviews, reviewing impacts of the bridges, public involvement, and also the historically under utilized business contracting issues. The ankeny pump system involves the same thing. Public involvement, landscaping, architectural issues. This facility will also have a significant impact on the burnside

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area of the waterfront park. We're going to be spending a significant amount of time working with the bureaus, parks, planning, in putting these projects together. So I just wanted to bring you up to date on where we were today. And if you have any questions, I'll be glad to try and answer them.

Sten: Questions from the council?

Hales: Yeah, I've got a couple. Can you tell us about the state of the work in terms of the coordination between your bureau and transportation on the CSO tunnel? How is that tunnel going to be built? Is that a surface excavation? Is that tunneling underground? How is that coordinated with the planned improvements of Naito Parkway?

Gribbon: There will be a significant amount of coordination. It's tunneling underground, but you need access points to get there, and you need retrieval points. And we anticipate about three points where we'll be inserting a machine underground and there they will be retrieving the machine—

Hales: Do you know where those points are yet?

Gribbon: One near the Marquam bridge, which will require coordination with the whole southwest macadam site. The other area would be—will have an open-cut portion near the Ankeny pump station, because there will be a tie-in between the northwest CSO tunnel and the Ankeny pump station. And the other—

Hales: Excuse me. Is that going to be in the park or the street?

Gribbon: It will be in the park. The tunnel is expected right now preliminary alignment will be under waterfront park. The only open cut portion of that under the park would be at the Ankeny pump station. So it would be at the Ankeny pump station directly west to intersect the tunnel. That would be the only open cut portion we anticipate in waterfront park.

Hales: Okay. What about the portion in Naito Parkway northwest of there? Is that going to be under the street, or under the—it must be under the street.

Gribbon: It's a tunnel. We don't anticipate any open cut portions in Naito Parkway.

== Ever?

Hales: What I'm getting at is the propensity of all of this in public works to pave a street and tear it up again. We are as we speak planning street trees and laying asphalt on a section of Naito Parkway which I would be very grumpy to see another city bureau tear up a year later. So I don't want that to happen.

Gribbon: I agree totally.

Hales: Tell me about 11th. And the Tanner Creek separation construction. Because we're building streetcar tracks in those three blocks of 11th that you plan to occupy right now. So what's going to happen there?

Gribbon: Well, we're aware of the situation on Tanner. We've got two pieces of Tanner phases II and V, which are out to bid right now. V was accelerated to deal with the Hoyt Street development, and we've also got I think a piece of five that will intersect the streetcar and there's already been conversations between members of the Bureau of Transportation about that interface. That also will be a tunnel under the streetcar tracks.

Hales: You will not disturb the street surface—

Gribbon: We will disturb the street surface for retrieving, for insertion pit and retrieval pit. The insertion pit is near the Hoyt Street development, which we're dealing with the Hoyt Street development people on that, the area under the streetcar is going to be a tunneled portion.

Hales: All right. Good. So to ask this question more generally rather than putting you on the spot for block by block, you're relatively bullish about the level of coordination between—you're getting the coordination you need, do you feel, and that things are going generally well? Don't—we don't shoot messengers here. I'd rather here about it now than—

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Gribbon: coordination is a very big issue. It's one we recognize. There's a lot of stakeholders involved.

Hales: But you feel you're getting the cooperation you need?

Gribbon: yes, sir.

Hales: If not, please let me and other commissioners in charge know. I think all of us share that goal of not tearing up fresh asphalt, which means our folks my folks need to not lay it before you're done, and you're negotiation need to not dig it up after they're done, whenever possible. In the real world we're going to have to do some of that, I realize, but—and we're also moving pretty aggressively to try to engineer the next phase of the streetcar down to riverplace and cross your works once again. So you are right, coordination matters a lot.

Saltzman: Do we have a standing committee between pdot, and parks—

Gribbon: each project has a project team, a committee, and included as part of that are members of other bureaus that are involved in a particular project. It's a regular part of what we do.

Hales: Good.

Saltzman: The community benefit opportunity, what was it called, CBO? That money is based upon the amount of the construction, or the amount of the design?

Gribbon: the million dollars is a planning level estimate that would include everything.

Saltzman: Million dollar cbo for the ankeny and the west side tunnel?

Gribbon: correct.

Saltzman: Then we will set up committees ore a process under which citizens can submit ideas, things like that?

Gribbon: yes.

Saltzman: Great.

Sten: Aye. Could you read 862, please? I think this was included in the last presentation. Is there any public testimony on this item? No? Roll call.

Sten: Aye. 863, please. I believe this is the second reading, so—is it still open? It is a second reading. Roll call.

Francesconi: I haven't changed my mind. I'm still opposed to this. It's a good idea, but it needs more work. And number 2, i'm not—don't think it's the right source of money. At least at this point. So it appears we have a choice. We can take \$500,000 a year from ratepayers for a program that still has no measurable outcomes, and that may not benefit them, or we can give them their money back. And I actually think this is a circumstance that we should not increase the rates. Eye—no.

Sten: the clerk was indicating this might not be a second reading.

Olson: it is not. it would have to pass to a second reading again.

Francesconi: I actually acquired about this. I think—inquired about this. I think it may be that I asked a question about, did you have to change another legal portion of it. Remember, when you and I had that debate? I think that maybe somebody concluded that, yeah, we did. So I think they may have made another modification. But i'm not sure. That's what I was told. I don't know if i'm right.

Saltzman: It's the second reading on the agenda.

==it says previous agenda, but it doesn't say second reading.

Sten: It does say second reading on the calendar.

Saltzman: We didn't—

Hales: We didn't amend it last time. So what else would it be if it's not a second reading? I don't get it.

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Olson: There was some discussion that there would be discussion today, and we were asked to change it to rather than second reading, to a previous agenda. To have it continued.

Hales: By whom?

Olson: The BES People, solid waste.

Hales: This is a second reading.

Saltzman: We can discuss it without having a change in status. We just can't take testimony.

Olson: It was my understanding someone wanted the testimony to be taken. There was quite a bit of discussion prior to this. But we could go ahead for a second reading.

Auerbach: if it's been read once last time and has not been changed, it's been read twice and you can read twice and you can vote on it. Whether you want to or not is a matter for your discretion.

Sten: It's been read once, it has not been amended. Is this my decision if i'm presiding? You would norm—

Auerbach: you would normally vote on it unless somebody asked to continue it.

Sten: It's been read once, it has not been amended. It says on the agenda it's a second reading. Therefore, in my mind it's a second reading. Roll call.

Francesconi: You want me to repeat what I said? [laughter]

Hales: One word, jim.

Francesconi: No.

Hales: Aye.

Saltzman: Aye.

Sten: There are these things some things would be worked out. I think it will work out. Aye. I sigh mr. Williams is here. I'm going to do 864 first and then go back to 830 since we've had people waiting. 864.

Item No. 864.

Sten: I'll ask our endangered species act manager for the city of Portland to come forward. I'll give an abbreviated introduction. The council has had a long work session on this, but for the folks watching at home or following this for the first time, the endangered species act list assisting two years old in the city of Portland, and next week on June 19th it looks like it will become real in the sense of the way an endangered species listing starts is a proposal to have a species listed, in this case it's salmon in the city of Portland. About two years later the federal government actually publishes rules that says what you can and cannot do under the endangered species act. The good news and bad news is we expect those rules to be somewhat vague, and fairly strict. And they're going to say you cannot do anything to harm salmon in the city. I think that's the right approach. The hard part is trying to figure out what does that mean. What the council is going to vote on today is what we're calling a draft framework. It really is a lot more than just kind of a sense of where we're going. It's the sum total of two years of looking at all of the actions the city takes, working with business and development community and the environmental community, and it's an outline and a strategy for how we're going to actually have a completed plan. The importance of a completed local plan is, once the plan is done, we're able to refer people to it and we hope to negotiate with the fisheries service that this local plan is adopted and approved. That will mean rather than fairly vague rules, we'll have a very specific set of actions that we intend to follow, and whether our business person or citizen, or both in the city of Portland, you should be able to look to this plan and have some certainty that your actions will be approved if you follow it. So it's really a huge step forward to us, and whereas in the past we've declared intent and done some preliminary work, this is a draft framework that with approval will go to nims. The idea is to have them tell us we're on the right track. Meanwhile, for people who are tuning in to this, all of this planning and assessing and strategizing has not stopped us from moving forward. The parks department has

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made a major effort to change how we do pesticides, b.e.s. Is working hard on changing how we clean out sewer pipes, this council has made dramatic changes on Johnson Creek that all work into this, and of course a major change with Portland General Electric are underway to take two dams off Bull Run. And an agreement to get the Ross Island mining completed in the next five years. So there's a whole slew of things that are happening, and all of it in planning and legal maneuvering, if you will, has not slowed us to start working on things to help the fish and make the city a better place. But this is really the next step in that process.

Jim Middaugh, Planning Bureau, Manager of the Endangered Species Act Program: Thank you very much for considering this resolution today. I think what you have before you is a groundbreaking approach to ensure a collaborative coordinated cost-effective approach to responding to the Endangered Species Act. We are the first metro area to face this issue, and I think we've really risen to the challenge. The framework ensures all the city's work on Clean Water Act, CSOS, parks, erosion control, development guidelines, works together in a collaborative cost-effective way to address NIMS concerns with fish. It recognizes an urban area is a unique environment for salmon and steelhead, and it allows us the flexibility or will create the flexibility we need to work with people to work with our housing needs, transportation needs, jobs needs and still support fish at the same time. It ensures each city bureau has an opportunity to contribute effectively to the effort we make to respond to fish needs, and I think we're going to do a great job. The reaction I have from National Marine Fisheries Service is very positive. This plan I assure you doesn't get us to compliance, but puts us on a clear path to come up with an answer and will establish a clear process for people in the community to participate with us as we move forward. I'm really happy with the collaboration I've received from the Planning Bureau and under the leadership of Gil Kelly and the Environmental Service Director, I think we've got a good product that NIMS will look upon favorably. If you have any questioning, I would be happy to attempt to answer them.

Sten: Questions for the council?

Francesconi: You alluded to it, do we—is the city getting our act together in terms of having a coordinated response with Gil Kelly in charge? Is that working better?

Middaugh: I think we've made substantial progress in the last several weeks thanks to the leadership of the council and the pressure that you're putting on bureau directors and the rest of the staff to really start working together. We've had the last two weeks several meetings of the appropriate managers from the Planning Bureau and b.e.s., and we're making specific assignments to collaborative groups of planning, b.e.s., parks and other staff. So I feel like things are moving forward very effectively. Is it fast enough? I'd sure like to see it move faster, but the attitude is there and I appreciate the leadership you guys have exercised to get us talking.

Francesconi: Is there anything we can do to make the progress faster?

Middaugh: I think keep putting the pressure on us.

Francesconi: What does that mean?

Middaugh: Every time you hear of something related to fish or natural resources to the—remind us you need to consider transportation, parks, ESA, all those needs together, that's going to help. I'm getting great cooperation from the bureau directors and the technical staff and managers from the other bureaus at this point.

Francesconi: Can you talk to us about the role of the business community in the process, and where that's at?

Middaugh: We had a brown bag lunch two weeks ago with about 27 members of the business community, and I'm going to speak to the Columbia Corridor Association, and other business associations and organizations, and they've asked us, what is the process? We've said, our sense is there's a lot of steering committees and advisory committees, and other things already ongoing

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within the city, and we don't want to create a lot of meetings for you to go to if we don't need to. I was speaking with ann gardener from the schnitzer group, and we want to establish a clear procedure, but we don't want it to be onerous. We're looking to be—to look for avenues where business community leaders are already gathered and trying to use those settings to the degree possible and using things like the planning bureau citizen advisory committee and the north macadam group so we don't duplicate existing efforts. I think that's going to work effectively. If there are discussions— suggestion that's come from the business community, we'll entertain them.

Sten: This—jim has been doing a great job, but this goes back a couple of years. There's probably—there's more, but at least in the last couple of years app's had a committee that meets regularly, and a coalition has begun to form among the group of businesses, and at each meeting i've had with each of these groups, i've asked for a recommendation on what would be an effective way to get business input, because I can't nail it. I'm not convinced handpicking— there's so many different properties and other things, i'm not convinced handpicking your advisory committee is going to do much. The problem, i'm not being critical of the business community, but I want to put them in the same boat as me, at every single meeting i've asked somebody to give me—there's a constant feeling, business communicated, we've got to be informed, and absolutely nothing is probably more important, but i'm yet to come up in my own head or any suggestion from anybody at the meetings, how do you get the whole business community who is so diverse to be coordinated by this? And there hasn't been a desire to start another group. So i'm looking at it. Usually do you an advisory committee, but there hasn't been a lot of eagerness for that. The existing committees can't quite carry the job. So what we've started doing is sort of calling meetings, inviting everybody on a regular basis for updates, trying to make sure jim or myself or kathleen is at just about every forum that's going on, and I think we're making some progress. The riparian committee was close to hiring a completely separate scientific team from what we're doing, and we're going to coordinate those efforts. So we're not doing battling—i think we're close to having a couple of properties step forward and say they would like to be test cases to work with us to get through it. What we're saying to them, and this is embraced by some, and not embraced by others, our goal is that our plan gets distinguished to the point that if you're in compliance with it, you don't have to worry about nims. The city is standing in and acting as, essentially we view being in compliance with esa as one more of the many things you have to do to be in come eye answer with building and developing. The alternate is you get almost no guidelines if you don't use us as the intermediary, and you just take each project through. Legally a business can still do it either way. Up until, which I don't know will ever happen, the city takes i'm not sure i'd recommend this—up until the city takes this plan and makes it code, which seems unlikely to me, maybe some bits and pieces will become code over time, somebody can move forward under existing development rules, request a permit, and it's between them and whichever environmental group sues them, and us, whether or not they're in compliance. We're trying to get a more proactive path. The businesses still have opportunities to them. We think that both sides will fail without working together, but the exact mechanism to coordinate that has proved elusive. I don't point fingers at us or the business community. I think we are making progress, though, and are in better shape. The other piece was, it was hard to coordinate things until we had something to show people. I think this framework is at least developed enough that somebody who is a developer can take it home and say, okay, is this a direction I can go with or not? Once we agree on direction, that's when the specifics follow. And I think the general consensus, that's all I can say, of the 27 people which represented a wide variety of folks who showed up at the latest briefing, was direction is kind of agreed upon now. But specifics will take a lot of debate.

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Francesconi: So if—one of the things you said, if they comply with our regulations, they comply with nims. Are we saying the same thing about metro?

Sten: Well, yes. That's not there yet, but jim and i, and I think everybody's goal is within—I think less than a year, we would like to have a plan of action that's specific enough that we can take it to nims and metro and say you should be in compliance with title iii at metro and the endangered species act if you're working under the auspices of this plan. That's where we think the value the city brings to this is. To broke they're agreement with everybody. Every parcel is so unique, even when we have this completed plan, it's likely there will be holes in it. You'll look at a parcel and say, what do you do here? I think people will have as much certainty, I think with this we can deliver—if the business community works with us, that still has to keep moving forward, and the environmental community works with us, because we can have as much forward movement for fish on the substantive side, and much legal certainty as is possible under the endangered species act. Right now we've got some forward movement for fish on things we're working on, and virtually no legal certainty. And that's where you're trying to bring this thing around.

Francesconi: What was behind my question was, one thing you already hit upon, which was I had heard there was going to be dueling sciences between the business folks and the city. You're saying that's coming together?

Sten: The business community has to make that decision. There's a lot of talk about, you know, who was, who wasn't. Let me be clear. My office was net of never invited to be part of the riparian committee. If—I don't think we're going to get into this, but the decision to do the independent science was made by that coalition of business folks, not in coordination with our office. We've since gone to them and said, I think it's fine to have your own experts, but we ought to coordinate the work scopes. Because we're not looking to get a certain result out of the science, we're looking to get enough base toys show nims that our strategy is scientifically sound. I think we're moving in that right direction, but if there's going to be coordination between the city and the development community, it takes two, and what keeps hang is the development community is saying to the city, you're not coordinating this, but there's a completely independent effort going on that we're not part of. That's what we have to—the two sides have to get their act together. I believe we're back on track, but I can't say for sure who is going to buy what science. But we're wasting a lot of money on battling science.

Francesconi: How much does our compliance depend upon private investment? Or can we get there without it? As we know, sometimes we need that private investment to do the right thing for the fish.

Sten: I think that one of our real strategies, one of the benefits we can bring to the development community, and I think—I don't want to be—it's tough this. Is a hard situation. The esa is a tough thing. It makes for tough decisions. I think a lynch pin of our strategy is we are going to try and show nims how, as part of our plan, major public investments can go a long way towards restoring the habitat the fish need. So parks, and all these things, and if the entire plan is a package, it follows that we should be able to give the private sector some help by spending public money, which they provide as well as everybody else, in a targeted fashion. That being said, we're going to need private money to do this as well. So the trick is to try and see, can you set up an overall plan under which there's key projects and those development sites that perhaps aren't as critical are kind of helping pay some money to get the key sites done, and the public is paying to get the key sites done. If that can be pulled off, everybody can win. So I think part of our issue also, and this needs to be really clear, is we don't want to recreate the real. There's \$500 million being spent in sewer funds on a clean water act response. There's however many million being spent on johnson creek for floodplain restoration. The trick is not to come up with another couple hundred million

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dollars, but take those funds and make sure they're used in a way that gets us into compliance with esa as well as accomplishing other objectives. If we can pull that off, we're going to give the private sector the breathing room it needs, but we won't take its obligation away from it.

Middaugh: that really is the essence of the framework. If you think of it in GIS terms. If you take our transportation investment and pdot is doing great work looking at improved road design to help with storm water, take the storm water permitting, take the csa efforts and the work—layer each of those in a watershed context, you've got a pretty aggressive program based upon what the city is already doing. Then you analyze with the national marine fishery service where we need to do more, and you find cost effective ways to do that. I think this framework is designed to lay that strategy out and get us a process to defining those places where we need to do a little more and a way to do it creatively.

Sten: Further questions? Let's open this up to public testimony. Would anyone like to testify? Did anybody sign up? Would anybody like to come forward and testify? Seeing nobody, roll call.

Francesconi: We're assembling our team and moving in the right direction. This is good. Commissioner Sten, you deserve a lot of the credit. Aye.

Hales: Aye.

Saltzman: Good work. Aye.

Sten: Before I vote, i'd like to thank the team. Jim and chris and kathleen, and all the other folks. It's a lot of work, but in some ways we've just now gotten ready to really get done. Aye. That is the end of our regular agenda. So i'd like to reopen the hearing on I believe it's 830. And ask if there's any public testimony on 830 that's since arrived. Looks like there is.

Item No. 830 -- resumed

Homer Williams, Hoyt Street Properties: homer williams w. Hoyt street properties. Would I have been attired differently, but I just heard about it.

Sten: Maybe you should have tiffany testify.
where is she?

Sten: I'm kidding. Go ahead.

Williams: it's hard. We were—we've been having discussions with the commissioner and parks and we're trying to work towards a solution for this. The information that we have right now really doesn't put us in a position to make a comment, but as I understand, this doesn't go for a vote until next week. Is that right? And I think that—but anyway. I wasn't aware of that until I got down here. But we would like to have some time before the vote, if possible, to discuss it.

Francesconi: Let me lay this out for the council. And then homer, you can respond if you want. Here is the deal, folks. We have a good—I want to emphasize, we have good parks in the river district that's going to help the area. And we have a good developer that's contributed a lot. There was a controversy that's arisen after the fact as to whether an sdc credit should be given for the first piece of property. The rules of the game that we established clearly called for that at the time. And the parks—that matter is in litigation in a separate forum, and it actually may come is that appealed to the council? No. So that matter is out there. In looking at this, mr. Williams has another piece of property that's going to come back again, and there's going to be an issue again as to an issue of the credit. So there's—next week the council—we have three options in front of the council, as I see it. One of which—and again, as the amendment i'm going to recommend from—that mike hauck is, we have to do what's best for the whole city and the whole park system, not any particular part of it. Now, we have three options. We can say, no credit of any kind for any reason for second parks or anything else in the river district. We've got a credit, we're changing it. And that's it. That's one option. A second option is to give them a credit for the second park parcel which it comes in. Which is I think what homer would like. And in fact, council, you should

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know that in a private discussion with me, parks actually recommended that to me. The third option is to do what I think, I regardless of homer williams and the river district, is the best public policy, because I just can tell that you \$500,000, coming out of our budget last time for enhanced maintenance in the central city is killing our neighborhood parks. So if we can set up a system that is in the best interest of the park system through this enhanced maintenance, now, I think mr. Williams would like more guarantees, et cetera, but I am recommending to the council that we proceed with that third approach. So that is what is underline this, and i'm glad you came, homer, because that way the council has a right to say i'm wrong. So—and you have a right to say i'm wrong. Because I think you really feel that I am wrong. And you could just say it. So anyway.

Hales: I have a question. I don't understand how those two issues are entangled about how we might in the future, because all ordinances we adopt are—

Francesconi: Steve can answer this. Pete, I hope he's still here, can answer this. I think there's language in the development agreement section that makes it such that we could do what we're doing regarding the second parcel. That's my understanding.

Steve Janik: commissioner Hales, steve janik. The original sdc ordinance that was adopted would have and did allow a credit, even if the developer was giving the park as a result of a development agreement with the city. The amendments would basically say no credit if you are giving the park land because of a development agreement with the city. And the retroactivity of that amendment is such that it affects development agreements that are currently in place. What it says is, this does not apply to sdc credit applications that are in process. So if you have a development agreement, these amendments pass. Then you file an sdc credit application. You would be forced to give the park, because of the agreement, the development agreement, but you would receive no credit for it under these amendments. Now, in lieu of that situation, the amendments also contain a provision that says you will receive a credit if you agree to enter into a long-term agreement where you do enhanced maintenance of urban parks in the city. And the credit you get is the discounted present value of the expenditures you would make over the life of that long-term agreement. And what that will do is avoid the park bureau having to use its budgeted funds to pay for that kind of enhanced maintenance for urban parks. So in a nutshell, that's what these amendments would do.

Hales: I guess I didn't understand the amendment that's way. Maybe I just hadn't read them closely enough. I thought they authorized negotiations, that a future development agreement, the last section here dealing with pdc—

Janik: yes. With respect to a future development agreement, what the amendments say is if you're going to enter into a future development agreement with the city, and you want to get a credit for lands you would give under that future development agreement, you have to in effect negotiate the amount of the credit and the availability of the credit in the context of your new development agreement. But that doesn't pertain to development agreements like the hoyt street agreement that are already in place, commissioner.

Francesconi: While you're asking questions, here's what i'd like to do. Would I like to not vote today, and I want to make sure we get testimony again next time. Because I want to make sure everybody knows everything that's going on. And I want to air this out— this was all sent to the league, et cetera, for example. But I want to make sure there's an opportunity for further testimony on this now that we've sharpened the issue.

Sten: I—it sounds like we should continue this hearing for next week or two weeks?

Francesconi: I think—i don't know. Maybe we should do it in two weeks.

Auerbach: you might want to move and vote on the amendments so—

Sten: I got it.

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Francesconi: I think we should say two weeks.

Sten: We'll continue this for two weeks.

Hales: I've got a lot of questions and I won't be here in two weeks.

Francesconi: Let's do it when you're here.

Hales: I'm here next week.

Francesconi: Let's do it next week, then.

Saltzman: I understand your concern. You have property that's in a development agreement, and—you're concerned about whether nature of any kind of an sdc credit that may be available to you after we pass the amendments.

Janik: correct. But I favored the park sdcs. And actually we're not—we are paying—we're only getting a credit for that amount in our area. And basically our deal was, we give the land the city to build the parks, and that's what it was. Then the idea of sdcs came up, and we were supportive of it, but we felt we would still get credits for that amount. And I think that we're trying to do things down there that we were not asked to do. Now i—in some ways I feel like i'm getting forced, but we set up the pearl arts foundation, the partners, joe and clay and everybody, put in almost a quarter of a million dollars. We raised another \$200,000 for artwork for the parks. We weren't asked to do that. We set up a master association so we could raise money from people that lived down there, because we believe that you should be willing to contribute to the maintenance of the parks in your neighborhood.

Saltzman: That's already been set up?

Janik: yes, we've already set these things up. And I think that because—you know, I think what jim is doing in parks is terrific, and I think—and working with the people in parks, we all have the same goal, to do something that's really special down there. And then to be able to maintain it. And this is just kind of a catch-22, and I think, you know, i'm confident we're going to get it worked out, but it's—the devil is always in the details, and we haven't had a chance to flush that out. And it's—so, you know, I think we all agree that there has to be times we can disagree and still love each other and get along and keep moving, you know. And this is just one of those times. And I think we'll get there, and jim is trying to get there, and it's—we're wrestling with some difficult issues.

Francesconi: The one thing I am certain of is that taking the second park and asking homer to do more maintenance on top of it is going a little too far. So that part i'm sure of. People can disagree with me on that, but I feel that. So now the debate is, in my mind, do you give him the second credit and—or do you do the enhance the maintenance, because enhance the maintenance is something that will really help the park system in the long run in the central city. That's the direction i'm leaning.

Janik: we think that's good for the neighborhood.

Francesconi: What i'd like to do is shoot for next week. What—i want to get notice out, and i'd like commissioner Hales to be here. Mary ann cannot be here, but that's okay. If we can't get it all together, i'll let council know and we'll hold it over. But let's shoot for next week.

Sten: We're going to continue this to next week. Before we finish, we have two matters, we had a substitute ordinance, so i—i need a motion to substitute to push it in at the beginning, but I didn't.

Saltzman: so moved.

Sten: Is that something you still want to do.

Francesconi: Yes.

Sten: Via motion. A second?

Francesconi: Second.

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Sten: Any objections? Hearing none, let's put this—the substitute in place. And then I believe we have a couple of amendments that were -- minor.

Francesconi: I thought that's one we just did.

Auerbach: there was a substitute filed after the original ordinance was filed.

Francesconi: Okay.

Auerbach: now you need to do the amendment that's came in after the substitute.

Francesconi: Mary ann had technical amendments. Which I don't have in front of me.
== this page.

Francesconi: How do I identify these? Okay. The—I'll do all three at once. The first amendment is in directive a, the phrase that should be inserted into the code, it should read, and is not a real property interest already committed by the contractor, or other obligation to public recreational use. The second amendment is, the "or"—it should be an "or" instead of an "and" in directive b. Between sub 1 and sub 2. The third amendment is mike hauck's amendment that at the end of—what section? E? I don't have the ordinance in front of me.

Cassin: it's e-6-d.

Francesconi: The sentence after describing the parks director has final authority, this sentence is added—such enhanced maintenance shall be evaluated in the context text of the overall needs of the city's park system, period. Those are the three amendments.

Sten: Via motion. Do we have a second?

Saltzman: Second.

Sten: Why don't we take a roll call on these.

Francesconi: Aye.

Hales: This is just on those technical amendments. Aye.

Saltzman: Aye.

Sten: Aye. So we will continue this hearing on the distribute ordinance as substitute ordinance as amended next week.

Auerbach: why don't you move to it a second reading. You can take testimony at a second reading, about you—you can take additional testimony and vote on it. So you can get it in before July 1, which is when they want it to be effective.

Sten: We'll move this to a second reading next week as amended on the substitute ordinance. And we'll see you next week at the 9:30 hearing.

Francesconi: For testimony.

Sten: And we have one more order of business before the council, a four-fifths item. I need a motion to suspend the rules to consider the item.

Saltzman: So moved.

Hales: What is it?

Sten: Do you have it? Do we have copies?

Olson: yes, you were issued copies earlier.
== it's a purchasing report that was filed but not put on the calendar.

Sten: This was an item of routine purchase that was properly filed and the—in the clerk—and the clerk's office failed to get it on to the calendar. It was just a human error, and it will mess up the contract if it doesn't go through today. That's why I understand it's a four-fifths ordinance. I have a motion and second. Could you read—to suspend the rules. I don't know the item number.

864-1.

Olson: accept bid of Portland freight liner to furnish fire apparatus.

Sten: Is there any public testimony on this item? Any council discussion? In that case, roll call, please.

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Sten: Aye. It passes, and the council is adjourned until 2 o'clock today.
At 11:17 a.m., Council recessed.

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Key: == means unidentified speaker.

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Sten: The mayor is on vacation this week, and we'll start with 865. Can you read the time certain, Britta? Staff is coming up. Before you start, can we take a second and figure out what the format is? Is this officially a land use appeal, or—

Ruth Spetter, Senior Deputy City Attorney: I don't know that it's a louis appeal. Land use appeal. I haven't really thought about it. It is not under title 33, or 34. So I don't think you're going to need the warnings that you you shall—usually have.

Sten: I'm inclined to treat this like a regular appeal and give the appellants ten minutes or something like that to make their case after staff presents.

Spetter: I can just go through the rigmarole so we don't have it as an issue.

Sten: Sure.

Spetter: assuming this is a land use matter, even if it's not, in the end, please make sure that your comments relate to any code or statutory section that you think is applicable, because your failure to do so may prevent an appeal at a later date. I'm not going to talk about the record, i'm not sure there's been a record. I would like—there hasn't been any issue about this being a land use matter? Okay. I would turn to the council and mr. President to ask whether there's been any ex parte contacts or any other kinds of conflicts that someone needs to discuss.

Sten: Anybody on the council have ex parte contacts?

Francesconi: I received one cryptic e-mail from pdc. I wish i'd had more cryptic— ex parte contacts. Other than that, I haven't had any. Is rigmarole a legal word?

== I think it's also a dessert. [laughter]

Hales: I thought it was italian.

Spetter: should anybody have any questions about the one e-mail that was mentioned, feel free to ask the commissioner about it. I don't think this is a land use matter.

Sten: Months ago, long before this was in appeal I had a conversation with some representatives from the walsh company about the question of tax abatements. Sow i'm familiar with the situation. Are we going to treat both of these appeals as one discussion, or do you want to do them separately as staff? It's the same issue, if I understand—

Spetter: that's correct. We anticipated treating both at the same time.

Sten: Why don't we have the staff make a presentation that speaks to both situations, and then we'll ask each of the parties to come up and talk to us about their situation.

Olson: Should I read the next title?

Sten: Why don't you read 866. Thanks, Britta. Mass.

Spetter: you do have separate appeals from both.

Sten: I was inclined to give each appellant ten minutes, the principal appellant, and ask supporters to testify after that. Does that sound fair?

Francesconi: Does it depend on who they actually send up? That's fine.

Sten: We have discretion. Let's start with the staff presentation, then.

Andy Wilch, Portland Department Commission (PDC): thank you. My name is andy welsh, i'm the housing development finance manager. I'm here today to talk about the pdc role and the decisions making on these two applications for single family new construction limited tax

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assessment program as you all know, pdc administers six different tax abatement procedures. The tax abatement at hand here, the single family new construction limited tax assessment program, we've received two applications for tax abatement under this program. One from fargo row investment corporation, the other from sideras construction. We're not advocating for or—we're advocating against the applications—for or against, we just want to present what the code and legislative basis is for the denial of those applications. I would like to introduce who is with me here, mr. Spencer is the program administrator, to his left mike, who is one of the key planning department coordinators on these programs, in addition behind me to the left, rudy, the director of housing for pdc, and matt, legal counsel for pdc. I'd like to turn it over to wit who can lay out the specifics.

Whit Spencer, PDC: thank you, andy. My name is wit spencer and I work for the Portland development commission. I'm the program administrator. As andy had said, i'm here with matt with the planning bureau, which offers policy assistance, and andy, who oversees the program as manager. We're going to run statute 458.005 through 458.065 and city code 3.102 author and guide the administration of the single family new construction program. The program is nearly ten years old and has qualified 1200 single family family homes per date. The program abates the assessment of the improvement value of the structure for ten years. Which is roughly a savings of about \$1,000 a year for ten years to the property owner. There are currently no requirements associated with ownership, affordability or design. Criteria is that the program is located in designated distressed area, sells for less than a maximum sales price and deemed a single family home. Original purpose of the program was to help stimulate development in particular areas of Portland. This afternoon you'll hear two separate appeals to staff's opinion to deny two separate applications for the limited tax abatement program. Sideras construction and fargo row investment corporation. The denials were based on a determination that condominium projects are not single family structures and therefor do not qualify for this program. Both applications represent condominiums. Which are part of larger multifamily structures. The staff position is that there is no legislative guidance or local code authority that would allow staff to reach an administrative decision to include condominium development in this program. In fact, all evidence we have found indicates this program is intended for single family structures only. The statute of approval criteria, ors 458.035, the city may approve an application made under the statute if it finds that the proposed construction will result in a structure that meets the definition of single unit housing unit. The statute's definitions state, single unit housing unit means a newly constructed structure having only one dwelling unit. Portland's title 33 code definitions provide additional support for making a distinction between single family units and condominiums. A house is clearly a single unit, a row house is considered an attached house, and a condominium is considered a multidwelling structure. Title 33 zoning code definitions house—a detached dwelling unit located on its own lot. Attached house—a dwelling unit located on its own lot that shares one or more common or abutting walls with one or more dwelling units. An attached house does not share common floor ceilings with other units. Attached house is also called a row house or common wall house. Multidwelling structure—a structure that contains three or more units that share common walls or floor or ceiling with one or more units. The land underneath the structure is not divided into separate lots. Multidwelling includes structures commonly called garden apartments, apartments, and condominiums. Our interpretation leads us to believe condominiums are distinct from a single family house, distinct from attached houses or row houses. Staff is not opposed to the notion this property tax benefit should apply to condominiums as a structure type, but staff can find no background evidence either in related codes or in the legislative history to make this administrative interpretation. The issue of expanding the single family new construction program to include

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condominiums among others, has been under consideration by an inner agency work group led by Mike of the planning bureau since January. And the report will be available near the end of this month. Should the city council decide condominium development should reflect this benefit, staff believes a legislative amendment would be necessary to clarify this. The reason for denial to both applications is the same. The state statute authorized in the program defines an eligible single family unit as a property that is a structure having only one dwelling unit. Both properties in question are part of larger multifamily structures and therefore do not meet the criteria of the single family program. Staff's position has always been to first follow the directions of the enabling statute in administering this program and refer to other local codes for further definition. We're here to help council answer questions and ask that council affirm staff's interpretation and decision to reject Sideras Construction and Fargo Row investment application's—for the single family new construction limited tax assessment program allowed under Oregon statute and city code. Thank you. We're here to help you with your decision.

Sten: Questions for staff?

Francesconi: Is this the first time this has ever come up?

Mike Saba, Planning Bureau: No. In fact, I'm glad you asked that question. A little more background on the program. This program resulted as one of the tools that was recommended as part of the vacant and abandoned buildings task force, which is a work group formed in the late 1980s to deal with the issue of abandoned properties, vacant properties, especially in northeast Portland. The planning bureau was directed to initiate this legislation. Personally I came on board the housing section of the planning bureau after this had been adopted by the legislature. So I was not party to any of the drafting of the original statute. I have talked to staff who were involved, asking specifically were condos intended to be included or excluded. The staff person couldn't recall, just said it was probably an assumption that they were talking about single family, probably politically they didn't want to raise condos at the time before the legislature. So that's just further background in terms of staff contact. Regarding whether the issue has come up before, yes, it has come up before. Shortly after the program was adopted locally, we were approached about whether attached row house projects would be qualified under this proposal. Which is why staff looked at local code provisions to make the determination that attached row houses as defined in local code title 33 would justify a staff interpretation that—of a row house on its own lot would qualify under this program. The issue of condo came up by way of question by prospective applicants. The staff position has typically been to discourage them from applying under the interpretation we were working under. So this is really the first case where projects have been built, the application has been made, a rejection issued by staff and an appeal brought before you.

Francesconi: Just a follow-up on that. I was reading a brief, or—it's not a brief, a letter to us dated June 8th from Sideras Construction, and—and the definition of single housing unit in ours was just read to us. Newly constructed structure having only one dwelling unit. So I was trying to figure out, well, what's their argument that it's not? And then so a statement is made that says, on page 3 of their letter, the city of Portland has already fleshed out an—and interpreted this definition to include row houses by relying on city planning department code provisions for attached housing. Although this condominium is a structure in which the dwelling unit shares one or more common walls. Could you comment on that? Is that true?

Saba: That's true. That describes pretty much what the staff interpretation has been after the adoption of the local program. For example, the project like Knot Street row houses did qualify because that project was in a distressed area as geographically designated by the planning commission and went through several redesigns in order to qualify for this program. The initial version of that project contained apartments, garden apartments, other types of things, other than

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single family attached row houses, which could qualify under this program according to the interpretation staff is working under.

Sten: Could you share with me the three things it takes to qualify?

Saba: the project has to be a single family structure or a structure containing a single unit, it has to be in a designated distressed area, it needs to fall under a specific price limit that's set by resolution by council every year. In fact you recently raised the price limit to \$150,000 plus.

Sten: Those are the three issues.

Saba: primarily.

Sten: And you're currently doing a revamp of this—which doesn't matter, but you're doing a revamp of this program that we should expect back soon?

Saba: right. Those issues are other issues, but they're interesting ones in terms of what this program should be designed to accomplish in this housing market as opposed to the housing market we were facing ten years ago.

Sten: This won't be debated, but since this crowd is interested, i've been of the opinion for several years this statute needs to be revamped. I think to the extent we have a distressed area, it's a different kind of distressed area than it was when this program which has been very successful was written. I'm eager to see a new version of this tax abatement program. That isn't what's on discussion today.

Saba: we could characterize the reforms we're trying to make as more of a first-time home buyer program rather than a housing reduction program at this stage.

Sten: Yeah.

Francesconi: I guess one other question. Do we know—what the fiscal impact of this would be? If we grant this, what the consequences will be if we change at least the staff's interpretation?

Saba: well, setting aside the staff's position, which has been expressed already, in terms of the fiscal impact, our guess is probably 50-some units, possibly, could be in several condo projects qualified during a year's period of time based on our best guess, condo units, best guess on what the current activity is.

Francesconi: What does that translate into a money?
a thousand dollars a year.

Spencer: a savings of about \$1,000 a year to the taxpayer. So for every year you would—these applicants would be qualified, they would be qualified for ten years, \$1,000 times 10 years, roughly \$10,000, and if we can estimate there would be 50 application as year, that would be a fiscal impact of \$500,000 spread out over ten years for every year we would be qualifying condominium units.

Sten: How many units in these appeals?

Saba: i've seen the project, about the I think it's seven units for sideras construction, and I believe there are ten units.

Sten: It's your projection there might be 50 more. It's my contention i'd like to have this program rewritten long before a year from now. In terms of its ability. Let me ask an opinion. Other than that it's one lot instead of seven lots or ten lots, do you see anything in these—what the product is that's counter to the intent that—of this program to build units in distressed areas that are below—at below a certain price that people own?

Saba: this is just based on my observation. The concern by certain council members about the design of infill development in the neighborhoods, so essentially you'd be opening it up to not only condominiums that are configured like row houses, which is the essence of the appeal of one of the appellants, but you'd be opening it up to small scale multifamily structures that are registered as condominiums for sale or for rent in areas outside the central city or usually outside design zones.

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Sten: Let me ask it a different way. To my eyes, I cannot distinguish the difference between the knot street development that qualifies and these that don't.

Saba: the parking situation, obviously.

Sten: What would be different, the parking?

Saba: essentially a buyer of the knot street house assist buying a house on land similar to a single family house with parking available to them on the land. Which you'll—in the fargo row house you'll find the parking is collected behind the project in a group parking structure.

Sten: Our new land trust, for example, wouldn't qualify, clearly.

Saba: the land trust is another issue we're looking at. There are some subtle advertise --

Sten: Our new models will clearly not qualify.

Saba: no. That's not the case at all. Land trust issues is one we're looking at. I'm not sure it's the same issue as the one that's—

Sten: If a nonprofit owns the land, clearly the individual owner doesn't own the land, and by your definition, or the statute's definition, there's no way it can qualify.

Saba: that's—actually, my conversations with mr. Anderson, it depends on the structural configuration both of the project and the land. The lease arrangement between the purchaser and the owner of the land is probably not relevant in terms of tax abatement.

Sten: I understand the technical difference between these. But substantively the differences you would see between this and knot would be that the parking is in front and you have your own parking—

Saba: that's just one visual clue that you're looking at individual houses as opposed to a multifamily—

Sten: Let me ask this more directly. Is there an objection at staff's level to something about these projects, or is it directly a technical turn-down.

Spencer: this is a technical turn-down with a staff belief that you probably in order to fix it need to go to the legislature.

Sten: So you are not arguing there's something wrong with these projects.

Spencer: no.

Sten: It's objectionable to the spirit of the tax abatement statute. It's simply that they're technically will not eligible.

Saba: i'll take a shot. Both these projects are fine projects. We've reviewed them. They look like they meet the intent of what they want to do, provide a range of housing, some affordability. So it's not project-specific, the denial, it's purely based upon code and legislative mandate that these projects do not qualify, do not meet the intent of how we interpret the code and the—in the legislative information.

Sten: The intend was to avoid -- it's hard to understand how somebody would intend to grant tax abatement to row houses if there's an inch between them and not to them if it's a shared wall. That—i'm a legislature, that legislator, that doesn't make sense. That seems to be a technical turn-down as—maybe—as opposed to it not satisfying the intent of the statute. I think these projects—i don't want to jump ahead, seem to me if the intent of the statute was to build new construction, below a price picked by the council in distressed areas, at least implicit for people to own, if not explicit, these seem to meet that intent. What i'm saying is not to be— it seems to be a technically it doesn't qualify.

Saba: that's the basis—

Sten: Is that a fair assessment?

Saba: correct.

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Hales: Let me pursue that. It's like waving a red cloth in front of a bull when the subject is parking. Isn't the real distinction here the fact that it's not a lot in fee simple—

Saba: that's correct.

Hales: If it were a row house on its own lot with an imaginary line in the earth between the buildings and a plane between these buildings—the units, it would qualify?

Saba: yes.

Hales: But for that imaginary line, it doesn't. Right?

Saba: that's correct. Those imaginary lines become important for us.

Hales: I'm saying that's the problem. The law is written to deal with units on their own lots, and these aren't.

Saba: that's correct.

Hales: Okay. So the parking thing, how it's configured, what the project looks like you can't see the lines—they're on a plat, not on the lot.

Sten: I can buy that the legislative intent was not to build—I wouldn't necessarily agree with this, but the intent may have not been to build to— five-story buildings with stacked condos. Clearly the intent was not to say if you have that imaginary line you work, if you don't, you don't. It's got to be a technicality.

Hales: I think it is. There are people in the room who know more of the history of it than me, but I suspect, and Mike was involved in the late '70s, early '80s, all the way up to the late '80s, talking about condos was sort of a science fiction subject anyway, and it was more oversight than different intent. It was omission, not a decision to exclude condos. That doesn't mean the legal problem doesn't exist, but I suspect it wasn't any an muss towards condos. They weren't on the screen. Nobody was building condos in 1980. They had been a lost art for ten years.

Saba: the only counter to that is that there is a provision, though, it's a—the appellants will probably speak to this—that if a project is approved ask subsequently registers as condominiums, the assessor is authorized without notice to appeal to terminate the exemption.

Hales: Where does that come from?

Saba: that's in the statute.

Hales: In the statute, not in our code.

Saba: right.

== so we were looking at staff -- at clues as to how to guide us in making an administrative interpretation. The presentation of that becomes troublesome, because the assessor's office, who is guided by statute, has given authority to terminate the exemption.

Sten: I don't want to spend a lot of time on this. Could you help me on how it would be—it seems to me to be how would it be possible to register a single family home as defined as a condo? You would sell the land?

Saba: I guess they assume row houses would be acceptable. It's possible, because there's a row house development regulation existed at the time the city drafted—

Sten: It seems to me it's something somebody threw in. If it has to be a single family home, you cannot convert in any -- there would be no reason to convert a single family home into a condo that I can see. So in theory perhaps the argument would be that somebody thought ahead that somebody might just build row houses with individual lots, and in the future those owners might just want to collectively own the land and if they do so, that would—you just don't—

Hales: This looks to me— like a bar against due flexing the house.

Sten: That's what I think sit. That's where I was going. I think it's that, we don't want you subdividing the house.

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Hales: They weren't worried about condo conversion of single family projects, they were worried about people turning a large enough house into two smaller units and still getting the tax break.

Sten: My hunch is that the legislative intent was we want to build single family dwellings in these distressed neighborhoods and not load them up with apartment buildings and so if you're going to build a single family house as a roost to split—as a ruse to split it up, that—the idea is that a row house is okay if you have separate lots but not if it's collective is hard to follow.

Saba: what is stranger too is that provision exists in the other tax abatement programs designed for multiple dwelling incentives also. Now, the argument the other way is that there was an explicit allowance for a multiple dwelling project, that had been up until the late '90s limited to rental projects in the downtown area. So there was an explicit allowance of that. But that provision—both of which predate the allowance for condominium development.

Sten: Does the rental statute predate this statute?

Saba: yes, it does.

Sten: It sounds to me like it's a pull-along from the old one. I think the council is jumping ahead.

Francesconi: Yeah, we are. It was informative. I need to understand—who makes the final decision here? Let's see we—say we try to interpret somebody else's intent and we're wrong? Who decides this? Why is this—

Saba: these two case resist on appeal before council, so you can overturn the staff's recommendation.

Francesconi: Then what happens?

Hales: Somebody could sue the city over—

Sten: But I assume they'd have to go to court this. Isn't a land use appeals. Somebody would have to sue the city of Portland.

Hales: Right.

Francesconi: The other side of the coin is, what's the— what's the harm—how much money are we talking about to the—these things are built already, so they don't need the incentive to build it. They need the incentive to do what? So the rent—the charge will be less?

Saba: purchasers of the units would be enjoying an exemption on the improvement value of the property. Which brings us to another reason for the staff's interpretation. Mult county assessor does not separate land value from improvement value when they assess condominium projects. So it was just another clue to us that the configuration did not fit the intent of the program.

Spencer: the tax abatement will go to whoever owns the property. If the developer holds on to the property, they reap the benefits of the tax abatement and there's no requirements associated with keeping the units affordable.

Francesconi: So let's fast forward three or four months.

Sten: Let me ask a question. How can the developer hold on to the property if the statute to qualify requires that it be sold at a certain price?

Spencer: let me rephrase that. They can resell that to an investment—to an owner who could live in any part of the country or probably for that matter any part in the world and own the property, reap the tax benefits, and fought have any corresponding affordability be carried on to the renter.

Sten: That's true for any building in this program. Which is why I want to rewrite the program.

Spencer: the technical response was that the assessor in this county does not separate land and improvement value for condominiums. So they need to divide up the land value among the purchasers.

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Francesconi: Do you think your committee will recommend we approve these tax abatements but have some affordability built in and they'll come back with a fiscal impact? Is that what the committee is going to end up doing?

Saba: that's probably the script. But I think we are using this appeal for us to—for you to give us some direction.

Francesconi: Let me just speak ahead of time. Regardless of the outcome, do that. For me. == I have one vote.

Francesconi: Because I don't think that's what this is about. I think that's what we have to do, but there is a statute. One person's technicality is another person's law. And we're kind of arguing about that. Which isn't—shouldn't be our job, really. At some point it would be nice to get a legal opinion on this from somebody. Ruth.

Sten: Thank you very much. That was helpful. Why don't we start with item 865, which I believe is sideras construction. If I could ask a spokesperson for sideras to come forward. Can you do it in ten minutes?

David Sideras, President, Sideras Construction: oh, yeah. Easily. I wrote you all a fairly long letter that i'll allow you— i'm david sideras, the president and owner of sideras construction lending. We lend to contractors who build speculative projects where there is no final buyer and then those projects are sold and we're repaid. We took this back through foreclosure, columbia way condominiums, and we are selling them on contract to various people, owners are here in the audience today and you're welcome to speak with them if you would like to—or meet them if you'd like. I'm here as an appellant, but I don't really see it as an adversarial thing. The pdc staff has already admitted that they would like to see in their report to you they would like to see condos included. They don't see any reason for turning us down, but they need further clarification. We're appearing before you today to try to secure one of three things—allowing—allowing the tax abatement status to be conferred upon the condos, would be one choice. The second choice would be to allow the pdc to recognize—i included the tax rolls that the Multnomah county tax assessor has given each of these things. On the application that the pdc used they included the piece of land, the big piece of land that only has one tax number, but it is true that was previous to the condo plat. The condo plat made seven condos which have seven separate— it's in my exhibit b, which is on the next—in the next second half of your folder. Multnomah county tax assessor is quite capable of separating these into billable things where they can bill each of the homeowners for the land and for the—and for the building itself. Let's see. The reason that there's some question is because the ors 458.005, which is quoted in both my letter to you and also the staff report, is that the legislature came up with something called a single unit housing unit, or single unit dwelling unit, rather than just saying a single family home on its own lot, they came up with this brand-new fangled thing to be broader in scope. And they didn't really define it. There is no other definition of that. It doesn't say that condos are excluded, but it does in a different section of the law, specifically exclude floating homes and manufactured homes. So they had a chance to say condos are not available for this. Commissioner Hales stated that they weren't even on the radar ten, 20 years ago when this law was passed, but I have somebody from Oregon title who's been around for a long time, she guides condo plats through the necessary rigmarole for to make sure they get approved. I'm sure she's been working on it for a long time. Let's see. The second part of the law that seems to be of question is— let's see. 458.050, which eliminates the tax exemption upon converting to a condominium. There are several other areas in this statute in the whole— that state if you change the nature of the property, for example, if it becomes an industrial site or a business, or warehouse space or whatever, that you lose the tax exemption. I think this is—the thing I came up with, being a developer or somebody who deals with contractors on a daily

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basis, if you look in northwest Portland, there are big house that's have already been turn in addition condos. They are now three, four-unit condos. If something like that were to happen in southeast, tax abatement does not affect northwest, but southeast does have areas where there are big houses and there are the tax abatement program is in effect. And if you were to take one of those big houses and get tax abatement and then separate it into condos, you should have to go through the application process again. Tax abatement for one thing five years ago if you change the nature of the beast should not be automatically conferred on another three or four owners. Without going through the same application. I think that was the spirit of what that was. I think that i've said everything that i've wanted to say, and if you'd like to ask questions—

Sten: When this—when was this built?

Sideras: it took quite a long time. It started in late '97 and it finished february of this year, due to foreclosure proceedings and a bankruptcy.

Sten: How big are the units and how much are they selling for?

Sideras: they're 1,050 square feet and we're selling them for \$102,000. We're carrying contracts for people who have little blips on their credit that will fall off within a year or two, and so they weren't able to qualify for conventional financing, and we've sold them on contract. To them.

Hales: You took over the project and finished it?

Sideras: right.

Sten: Any further questions?

Sideras: I wanted to say one other thing. These condos are not similar to fargo row in that they have a single car garage, they're exactly configured like row houses. Our original plan was to build row houses, and there are seven lots underneath the building, but the seventh lot was much too small to meet the set-back requirements, so we were planning on building six that would have fit, but the city's density requirements forced us to put seven on as piece of land, and made us straddle these existing lot lines. So they look exactly like a row house.

Sten: Any questions, council?

Francesconi: I realize you're not a lawyer, but you're doing a better job—i don't know if this is a legal question, it might be, but i'm still having trouble on how you're getting around the statutory definition. Which defines single housing unit means a newly constructed structure with only a one—only one dwelling unit. I don't understand—we would like you to be able to get around it, but I don't understand how you're doing it.

Sideras: I looked up structure in the dictionary, and it said the sum of a parts of something. So you have this council is a structure—part of a structure of the city of Portland. It's a very broad definition as far as structure goes. The city of Portland—the pdc already knows that it's such a broad definition that they went looking somewhere else, in the city code, to come up with something more finite. And so—

Francesconi: How do you deal were the only one dwelling unit part?

Sideras: only one dwelling unit. Newly constructed structure having—well, I have somebody here from the knott street row homes who's a homeowner there, and I don't know if she can explain any better the difference between what you see at columbia way and what you see on knott street, or sixth place, but they are very similar. I also wanted to say, mr.— commissioner Hales also pointed out that the land underneath it was the deciding factor. The imaginary line between units. It is possible, barbara is saying sit possible to have the surveyor as part of the plat include the land underneath each unit. And therefore it would then meet the requirement that the city just got—the pdc just got done presenting to you. We're just trying to figure out how it's going to work.

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Sten: Is there attached—

Sideras: the walls are attached. You're survey a line in the dirt underneath and say, the condominium owner owns the land underneath them to the center of the earth, and it's the same as a row house.

Hales: So if you did a lot line adjustment, it would have taken—

Sideras: it would have taken two years.

Hales: But if you were to do it, pdc staff could recommend granting the tax abatement and you—

Sideras: i've already called the planning department and was told that it is impossible to change lot lines underneath an existing structure.

Hales: Okay. I'm not recommending that's a remedy, i'm just trying to understand the distinction. If you were crazy enough to go through a lot line adjustment process and cancel out all the tax benefits, i'm—i'm being facetious. If you were going to go through that process, and move the lot lines to underneath of the imaginary line between the two walls, then your staff could say, it looks like a row house, walks like a row house.

Sideras: it would have been a row house.

Hales: Right.

Sideras: we wouldn't have had to do the condo plat at all.

Hales: In your case, at least, the distinction is the location of the imaginary line, not their existence. They just happen to be running through the middle of the living room.

Sideras: right, rather than in the walls between the units.

Sten: And you're saying that's because the city required you to do seven units instead of six.

Sideras: right.

Sten: Thank you. Shall we go with walsh now? I'm inclined to take the ten minutes from the other applicant and then open it up to public testimony, if that's okay with the council, so we can get all the arguments on the table. Could representatives of walsh construction come up? The fargo row investment. Is ten minutes all right?

Nancy Ariana, attorney representing Fargo Row Investment: that's fine. Thank you very much. Mr. President and commissioners, I am a lawyer and i'll do my best to be clear and talk about the statute, because I think that is what we need to consider here today. My name is nancy, i'm from the foster pepper law firm. I'm here representing fargo row investment. With me is tom walsh, and also architect martha peck. I think sit important that we focus on the statute, because that's clearly what's at issue here and the legislative intent obviously is the key clue. What i'd also like to do is address some of the questions the commissioners raised earlier. I think the important thing to realize is that we're not operating in a vacuum. Although that has been suggested, this statutory scheme is unusual, or at least not the norm in the sense it does contain an express statement of legislative findings. We don't find that in any legislative enactment. If you look at the findings, there are four equally treated findings that prompted this legislation in the first place. They're not ranked in any order of priority, but two of them are to stimulate the construction of new single family residents in distressed urban areas—three, I guess. To promote residential infill development and encourage homeownership. I suggest that does suggest that we're not talking about rental units, we are talking about homeownership, and owner-occupied premises at that. To address the questions that were raised earlier, though, the other point I wanted to make clear at the front end here is that the statute does not define structure. We are left, however, with a legislative intent which is clear that we are to encourage residential infill and encourage homeownership and development of those opportunities in distressed areas. In looking first of all, though, at what we're talking about all together and how we draw the distinction between structures, I invite the president and the commissioners to take a look at the photographs i've brought with me here today

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and decide for yourself which you think is the row house and which the condominium. One of these photographs is the Knott Street project, which was previously mentioned. The other is Fargo Row, which has been denied the same tax abatement. I think the intuitive response might be that the project with the smaller number of units per structure would be the qualifying one. In fact, it is not. Fargo Row includes four plexes and a duplex while the row house, which is to your left, is the one that qualified. And did get the tax abatement. It seems to me nonsensical to say these should be treated differently unless there is clearly some explicit finding in the legislative history or some explicit statement in the statute which would compel that result. One of the keys to interpreting a statute is that you always start with the language of the statute itself. And again, the language of the statute is clear, there's a purpose behind this code provision. There were exclusions set forth as Mr. Sideras mentioned. Floating homes, manufactured homes are excluded, condominiums were not. There isn't a single reference in the statute anywhere, and I could find none in the legislative history, to ownership of the land beneath the property itself or beneath the homes themselves. The existence or nonexistence of these imaginary lines and the platting out simply had no bearing that I could find in the adoption of this statute. But what is interesting is that the statute was heavily supported by the city of Portland, and testimony was given on behalf of it by Bob Clay, chief planner of the housing section of the city of Portland when the statute was being considered. He pointed out two key factors which promoted the statute and for which the city of Portland was lobbying for the passage of the statute. One being to expand the number of families eligible for home purchase, and the other being there would be a minimal financial impact from the adoption of this tax abatement program. Both of those purposes are fully met by granting the abatement sought here, both of those purposes are denied by denying the abatements saw here. Mr. Sideras testified that he was required by the city to establish seven units instead of six. In fact, the Walsh project, Fargo Row, chose to put in ten units rather than the nine comparable units that could have been put up had it been designed as a row house. In both cases, the purpose of expanding the availability of affordable housing was met and met in a better way by setting up a condominium rather than by pursuing a row house development. That was the stated purpose for the city of Portland in promoting this legislation in the first place. Commissioner Francesconi asked about the financial impact of having this abatement granted. Among the statements made by Mr. Clay in his testimony in support of the legislation in the first place, was that any lost tax revenue should be more than offset by both the immediate and the long-term benefits of stabilizing a neighborhood. Certainly to the extent that more families are encouraged and allowed to move into a neighborhood and to establish homeownership that more moderate income families are included in that net, and to the extent the city of Portland can better serve this designated population, that statutory purpose is better met by any means within the statute that would support granting the tax abatement in this --. In this case it should be done, because there is no statutory prohibition against it. There was also a question raised by Commissioner Francesconi about the incentive. In this case these premises are already built. What's the incentive? And who would be harmed or helped by it? In this case, the Walsh project, Fargo Row, has homeowners waiting to find out, will they be allowed to purchase the homes they want? If granted the tax abatement they will be able to do so. I think it is not necessarily accurate to suggest that these are out of state owners looking for a tax write-off. These are in fact Portland residents, families of a moderate income level who can't can't a—can afford to purchase their first home only if given this abatement. The increase in cost to them will be approximately \$200 per month. Right now they can purchase a Fargo Row home for around \$800 a month if the tax abatement is granted. If the denial is upheld, that monthly price will rise to \$1,000 or so, which would increase by about \$10,000 annually the income that a family of four would have to earn in order to purchase one of these homes. So in essence in are two options here before

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the council today. One to take the highly conservative, highly technical and in my judgment ill advised -- advise and unnecessary view that while a row house qualifies as a, quote, structure with a single housing unit, a condominium does not qualify as a structure with a single housing unit. Doing so, that would do a grave disservice to the statutory intent to the purpose for which the city lobbied for the statute in the first place and live families out in waiting to purchase homes would be deprived of that opportunity. The other option before the city council today is to make the common sense judgment that because the statute is absolutely silent about condominiums, because the statute and legislative history both are absolutely silent about the property beneath the condominium or the row house or the single family dwelling, because these are clearly within the spirit and intent of the statute and most importantly they achieve all of the goals of the statutory scheme and the enabling ranks adopted by the city of Portland, the only appropriate resolution is to grant this tax abatement. Commissioner Francesconi likewise asked, what's the impact of that? What recourse might there be? Again, the question would be who would be harmed? There would be no one harmed that I can identify at this moment who might have the incentive to bring an appeal. There certainly are people who would be harmed and in a very practical immediate way if this were denied. It may well be true, and I have no doubt it's true, that the statute does need some tweaking, it does need revision. But the statute is as sit right now, it is clear and plain on its face, and this result is well established and well justified by the statute as it stand.

Sten: Thank you. Have you reviewed the staff's logic that I think—that says, I don't know if you have a copy of the memo—

Ariana: I do.

Sten: On page 2 of the sideras, I think the argument is the same in both, it says ors 458.035 states that the city can approve this application if we, the city, deem it the structure meets the definition of a single unit housing unit. And then the next argument they make is that a single unit housing immunity means a newly constructed structure having only one dwelling unit. Have you looked at that to see in your opinion how that relates to having a lot underneath the structure? That's essentially the argument, as I understand it. Unfortunately I don't see the lot number—the lot language in our memo. I see how we drew that interpretation. Have you looked at the legality of that?

Ariana: I have, mr. President. I've looked to the extent I have concluded there is no case. There's no judicial opinion on point. There is no judicial opinion yet published that interprets this statute. There simply is no history at all for us to look at on an alternative basis. The most we can look to at this point is the legislative history, and the language of the statute itself. I would say, however, that looking to a totally separate ordinance, looking to a zoning ordinance for guidance is like comparing apples and oranges. That may be instinctive for planners, but it is not good law in interpreting a statute.

Sten: I'm going to ask that question of our attorney. Your understanding of our argument is that there isn't anything in the state law that defines the part about you have to have a separate lot to be a separate structure, and we dry that out of a zoning ordinance -- we went to our—is that your understand something we went to our zoning ordinances to come to that conclusion?

Ariana: that's my understanding of the argument being made right now. In looking at the zoning ordinance itself, -- excuse me. Looking at the zoning ordinance itself, it says attached house is a dwelling unit located on its own lot. Then it says an attached house is also called a row house. There really is nothing more beyond that. I'm not sure how this was adopted, whether it was a adopted as a piece or whether that business about the row house was added at some later point. It appears to be by example rather than by definition. It goes on to say a multidwelling structure is one that contains three or more dwelling units. I'd point out one of the fargo row dwellings

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contains only two units. So it would not be the multidwelling structure, therefore must be an attached house under the ranks definition in the zoning section.

Sten: I think i'll hold late to ask our attorney questions.

Saltzman: The pdc relies also on the section ors 458.050 about very specifically saying if the assessor determines the use has been changed, other than single unit housing, the exemption is lost. How does that—

Ariana: well, that's troublesome, but there is simply no explanation I could find for that in the legislative history. It does appear to be a carryover from prior legislation. My best guesstimate is the same as commissioner Sten, that it must have had to do with a large single family home being subdivided. My assumption as well is that that's a general if i— gentrification issue. My reading is even if that were done, if one were denied administratively denied the exemption, one could reapply. If the criteria were met, then even that structure might be able to qualify. I think the important thing to look at is that the statute sets out the purpose and the ordinance sets out the qualifying criteria. The fargo row project meets all of those, and the only issue is the technical one of what does a structure containing a single housing unit mean? That's the only question now before the council. And when you look at these two pictures, you can't answer that with any consistency by saying, one of these pictures meets that definition of a structure with a single housing unit, and the other one does not. It has nothing at all to do with the property beneath the structure.

Sten: I think you answered this, but this is important for my decision. Your testimony is that that question of what is a single family structure is completely unanswered in the actual legislation, and we're going to other sources to try and figure that out. Is that a fair—did I say that clearly?

Ariana: it's not—

Sten: Your project qualifies, so when you look at the legislation that gives this city thorp authority to do this, and the ordinance enacting this, you meet what you see those two to say.

Ariana: there is what purports to be a definition, but the definition is awfully broad. It says a single unit housing unit. A single unit housing unit means a newly constructed structure having only one dwelling unit. Then it goes on to have criteria about the sides. But when you look at just that definition, the only precedent we have is what the city has done before. We know the city hazardous ignite add population it wishes to serve. We know there's a great need for this kind of housing. We know these look the same. So the precedent to the extent there is any is that the city has evidently determined that the fact that it is a structure with multiple units in it is not dispositive, we're going to look at each unit. Does each unit support a single family, is it within the affordable range and is it in a distressed area, and absolutely this project meets each and every one of those criteria.

Francesconi: I want to find I would like to give these homeowners a tax break. Number 2 is, I think it's the right city policy to do this. Number 3, I happen to know you and like you. Those three reasons, the third is not—

Ariana: we'll knock the third one off.

Francesconi: The problem i'm having, actually you tweaked me a little bit, when you said common sense dictates this result, when you—you're making an interpretive argument on the statute, but you don't get to the purpose of the statute if the statute is clear on its face. So—i don't want to debate that. That's not the question. The question i'm still having trouble with, and help me, because I want to find for you for two of the three reasons I just listed, but the statutory definition is, it doesn't stop. A newly constructed structure having only one dwelling unit in it. Fargo is on the right.

Ariana: on your right.

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Francesconi: And that got denied the tax abatement. I picked it out right away. To me, I see separate structures with only one dwelling unit. That's the one that got denied. I guess I just proved my point your point. [laughter]

Ariana: this is fargo, that's knott street. The point being that knott street has far more units than fargo has. Fargo is the one that looks more.

Francesconi: Why did fargo did get denied? I convinced myself by my example. Go ahead.

Ariana: fargo actually does resemble more a single unit housing unit in the sense there are smaller structures.

Francesconi: Does the structure stop? Why did that one get denied?

Ariana: as I understand it, it was denied because it was platted as a condominium, and that is the only stated reason the staff has offered.

Hales: Physically there's no difference.

Ariana: no difference.

Hales: I think, jim, we didn't decide this, previous practice—

Francesconi: I know.

Hales: Practice decided this when we allowed this for row houses. Because a unit is a row house, which is nailed to the next unit, which is nailed to the next unit.

Sten: Let me insert—I hate to do it, but a little process. With haven't taken public testimony. I think we've got your argument, although I want to—anybody have more questions for the appellant? As I see it, we should probably take public testimony next. I think there's a sense of—I have a sense of where at least a couple of the votes are. I'm going to—who would like to testify? Do we have a sign-up sheet?

Olson: Yes, we do.

Sten: Do we have anybody who intends to testify against the tax abatement? Is there any citizen who's would like to testify against the tax abatement? No. Okay. Let's take the public testimony and i'm going to ask, given I think the council is just about ready to bait this, i'd like people to stick to the question of, why should—you are all testifying in favor of the tax abatement, i'd like you to stick the—to the question of why should there be a tax abatement. I think we'll get the argument of why people would like to see a tax abatement. Take whatever order you've got and go for it.

Olson: Come up three at a time, please.

Sten: There's three seats, so if you could come up, each of you. Any of you can go ahead and start. There's a time clock on the little—which—for those of you who have never testified before, there's a time clock on your monitor that will give you three minutes. If you could speak into the mike and before you start, introduce yourself. Thanks.

Caren DeLaCruz: my name is karen, i'm an owner at knott street town homes. Between the projects that sideras construction—excuse me. Between the projects of fargo and sideras construction at columbia way, I can't tell the difference between a townhouse, row house, condominium. I live in a townhouse. I own that townhouse. There are five units within that structure. So there are five separate families living in the structure. And I support the tax abatement because it's helped me as a first-time home buyer purchase and afford my townhouse.

Nancy Sideras: my name is nancy sideras, I am related to david sideras. I am an attorney. I have nothing to add legally. My learned counsel on the other case, I thought expressed herself very well. But I wanted to address one issue, which was the single unit housing unit. It would have been so simple for the state legislature to say, single family dwelling. Everybody knows what that is. They didn't say that. They created a new term. And they defined it very broadly. And I think the reason they did that, and again, there's no legislative history to help in this analysis,

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but the reason I believe they did this was to allow the city's—the cities to make this work for them. You have goals above and beyond this stated legislative findings that are contained in ors 458.010. One of those is higher density. You're trying to do an infilling process, but you're also trying to create more housing within boundaries created by the urban growth boundary. And one way to do that, the most efficient way to do that may not be a single family residents. I think you can look at a single unit housing unit as something that is discreetly owned by the occupant or person there. These are—can be titled, and transferred individually, so we're talking about individual housing units. It's a matter of title, transferability. It isn't something where you're selling an apartment building that has ten units in it. You're talking about something that reaches affordability issues for housing in this city that are a stated goal of the city. That's all I have to say. Thank you.

Francesconi: You know, the record should—should reflect and the citizens should appreciate this, lawyers do have some value sometimes:

Hales: They take a lot of heat in this room as a species. Nothing personal.

Jennifer Pugsley, Realtor for Sideras: 305 L St., Columbia City, 97018. my name is jennifer, and i'm with john l. Scott real estate and I was hired by sideras construction to sell the units on columbia way. My statement is brief. These are three-bedroom units. The garages on the bottom level, there is also a bedroom and the laundry facilities are located within the garage. So they do have parking included in the unit. But the biggest point I wanted to make was this morning when I was at my office I did a search as if I was a buyer coming into this area, where these condominiums are located. And looking at new construction, and the most affordable thing I could find outside of this condominium unit was priced at \$139,400. That means that to qualify with interest rates at 8.5 interest, which they were this morning, somebody would have to make a minimum of \$43,000. Looking at these condo units, they need about \$32,000 to qualify in income. So what I did was I went to fidelity title and got some census information, and I thought it was interesting only 28% of the household incomes were above 35,000 in this area. So what are these homeowners going to buy if they don't have these to buy? That's all I have.

Sten: Thank you.

Monica Watson: 6621 N. Columbia Way, No. 7, 97203. my name is monica, i'm one of the owners of the condominiums at—on columbia way. For me, it's an affordability factor. Being a single mother, and I have a good job, but even by myself it was very hard to qualify for some of the other projects, because my income is just a little bit too low for—to afford it. For me, it's an affordability factor, and the tax abatement would help me over the next ten years to be able to keep affording that, even though my income will go up, but it will make it easier for me to afford to live there.

Sten: Thank you.

Ed Marckx: PO Box 14457, 97293. my name is ed marks, also known as well made homes. I build condominiums projects. I don't have any in the tax abatement area. I have built six of the projects in the last few years. I have several more projects scheduled. None of them are tax abatement areas. And if this appeal is denied, I can't build in the tax abatement area. Because ply primary thrust in the—and the reason I do condominiums is to get to affordable housing. And we're returning, for example, the assistant developer waivers to our purchasers in order to get help for them to purchase. So the thrust of what I do is for affordable homes. And my homes are priced between 100 and \$125,000. That's for a three-bedroom townhome. But the tax abatement areas are generally less desirable areas, and if you don't add in the tax abatement, they are really not affordable to us. As a builder, I can tell you on the other side of the equation as far as single family dwellings are concerned, it is a very, very difficult—it is very, very difficult to build a single family dwelling on a free-standing lot in a tax abatement area and still be able to make a profit on

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it, and builders, by the way, work on very narrow profit margins, usually 3.5 to 5%. It's very difficult to do a single family dwelling in a tax abatement area, even if you can find it—single family lots. But I can turn out a reasonable amount of volume of homes in condominium projects by—in either tax abatement or nontax abatement areas. That are affordable. So the only other thing I have to add is that when you're talking about a single family dwelling for—to meet mr. Francesconi's question about a single family dwelling, it isn't a townhome or a housing unit, a single family dwelling?

Francesconi: I just have one quick question. It's not relevant to this case. So how do you feel about some kind of provision that would require some degree of affordability going forward as opposed to now there's nothing? You could turn around, the people you sell these homes to to turn around immediately and sell it for a higher amount because we don't have anything that requires it to last. Do you see what i'm saying? So the city is looking at that.

Marckx: yeah, okay. I see what you're saying.

Francesconi: It has nothing to do with this case.

Marckx: competitively. And i'm in this business, and i'm making a lot of units, as many as I can, and I intend to make as many as I can. Somebody I just sold a unit to, okay, can't really raise the price any more than my prices are raised. My prices are determined by market values, yes, but also by the fact that i—the amount of volume that I can do. My holding time and moving my units through very quickly. That's why I mentioned the fact that I return—in most cases where I can, where i'm allowed to get the systems development waiver, I return that to the purchaser in order to help them buy the units in order to help them get the down payment and the closing costs, because—it helps me from the standpoint of being able to sell through my projects faster. I made this comparison to commissioner Sten recently, but it's appropriate to bring it up. Fred meyer makes somewhere between a half percent and 1% on a can of beans. Okay? On the sale price. But fred meyer makes about 26% on investment, because that can of beans literally flies through the store. Along with a whole bunch more cans of beans, okay? Those same rules of economics apply to builders just as well.

Sten: I think you're giving the right answer. I think commissioner Francesconi asked the wrong question. [laughter] that's the next hearing. One of the things i'll say at the closing is I think—i hope all the builders will engage in this area about the ongoing program. Because we are going to make changes to the program. I think that's where you're going. Thanks.

Peggy Hurst: my name is peggy, and I am a first-time homeowner on the columbia way. I'm here in support of the tax abatement. It's been a blessing to just be able to afford affordable housing here, and i'm just here to support the outcome.

Sten: Thank you. Anybody else?

Barbara Kanz: 1515 SW 5tgh, 97201. president Sten, members of the council. My name is barbara, i'm with Oregon title insurance company in Portland. I'm not here on behalf of my company. I'm here as one who's been involved with condominiums for approximately 24 years. Initially with the real estate agency who reviewed and approved all condominiums, and I have coordinated working group that has presented all condominium legislation since 1977. And I have worked with developers and as a way of disclosure, I have been involved with the sideras project. I have some general comments, a catch-up. With respect to the condominium lot, it is a form of ownership. It can be virtually any kind of structure. We have all kinds, we can have floating homes, airplane hangars, the justice center is a condominium. It's just a form of ownership. On the surface I just hate to see anything being considered perhaps negatively because it is a—simply because of the form of ownership. And my—i could understand just looking initially with the single family structure issue until we saw that the row houses were granted approval. And that's

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what confused me. And I don't see that the structure is any different, and i—it seems to me the distinction here is the form of ownership. And that's a concern—a concern to me, and it's—and I know the one section that talks about disqualification is drafted rather strangely, I might say, very confusing. You present a declaration for approval, I suspect that was also a carryover and yet it is a valid concern. But I see here simply a discrimination, a distinction simply because of the form of ownership, and I do not understand that.

Sten: Thank you.

Martha Peck Andrews, for Tom Walsh and Fargo Row: 205 SE Grand, No. 207, 97214.

martha peck andrews, andrews architects. I'm here on behalf of tom walsh and the fargo row crew. I'm here merely as a resource if you have questions about the design, architectural design. Otherwise i'm going to defer to tom.

Sten: Questions? Thank you. Maybe later.

Tom Walsh, Fargo Row Investment Co.: 1100 NW Glisan, No. 300, 97219. my name is tom walsh. I'm a principal in fargo road developers. I want to address two questions. First, commissioner Francesconi, who benefits from this, young families. Fargo row are three and four-bedroom units with the possibility of lta granted. Families at 70% of median income qualify to make a home purchase. Our average price is \$124,300. That's a market rate price and it is delivered without subsidy of any kind. So the beneficiaries are not the developers, not the architects, they're the purchasers. The difference in terms of qualification for a prospective buyer is with the lta present, we will reach young families at just barely over 70% of median family income, and in the absence of lta, we'll still sell the units, young professionals from emanuel hospital lined up, they will be at 90 to 100% of median family income. Second, I want to see if I can help you with the 458 definition, the wonderful sentence, single unit housing means a newly constructed structure having only one dwelling unit. Each unit at fargo row, just as each unit at mr. Sideras's project and each unit at knott street, contains a single dwelling unit. Each is a newly constructed structure. The condominium act defines each of those spaces as a structure. I think a very straightforward reading of the statute says, forget whether you call ate row house or condominium, is it a one-dwelling unit? Yes. And is it a newly constructed structure? Yes. And are those structures lined up side by side by side? Yes. They meet the definition within the statute of a single unit housing unit. You don't need to turn to the planning code, you don't need to turn to the uniform building code. It's out of this statute, what tests had to be met. I believe it is clearly met. Lastly, the staff who has really worked diligently on this, and you've heard doesn't disagree with the intent, is literally today asked you for guidance. I think what nancy has given you is more than ample evidence in the law and in the legislative history, you have the ability to provide that guidance. You have the ability to make an interpretation, just as either an earlier council did or an earlier pdc did that row houses, as they evolved, it is much sense for the lta as single family, and is before you today to make expanding or an evolving interpretation that so do condominiums, and I think commissioner Sten, if you'll make the same determination, community land trust structures, that these are evolving forms of afford I can't believe homeownership versus what the intent of the program has been for.

Sten: Questions from the council for anybody?

== could I have a follow-up?

Sten: No. You get your testimony.

it was—

Sten: Thanks. Anybody else? Would anybody else like to testify who is in the audience today? Martha, could you take the pictures down? Thanks. Let's move to council discussion.

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Francesconi: I'd just like to make a motion. I'd like to overrule the staff objection and grant the tax abatement.

Sten: Any further discussion? Hearing none, roll call.

Francesconi: I can do what I wanted to do because the testimony for four reasons. One is I accept the statutory interpretation by mr. Walsh here at the end. Number 2, even if that is incorrect, that the—i accept the intent of the statute was as described by nancy. Number 3, as it's the right thing to do, to—given the issues that confront the city now in terms of homeownership for folks. And for all three of those reasons, I support the motion to overrule the staff, and I understand why they did that, but to grant the tax abatement. Once and—there is another reason. Common sense dictates this result, especially given the fact we've already decided to do it for row houses. For all those reasons, I vote aye.

Hales: It looks like this story will have a happy ending. That's very appropriate. Because there aren't any villains here. It's been a very helpful hearing for rudy, for you and your staff, and for us. I think it's highlighted a number of things. It really is time to reexamine this tool and see if it's the right tool for the future, and I know you're underway with that work, and that's great. And to refine the language and the rules for how the tool will be used. Obviously we need to do that. Secondly, I think this has been a very helpful hearing, because I think the staff did absolutely the right thing in making their recommendation based on the statute and the code, that's why the council has discretion that we have in everything from design review cases to something like this, the broadest interpretation authority should always be here, and this is the -- one of those occasions where it's appropriate for us to exercise broader authority than the staff would be—than would be appropriate in a situation like this. Thirdly, I think these points about the evolution of housing, the changes in the market are very valid. We've heard testimony here today that I don't know if the staff had heard it earlier, but we've gotten certainly we have built a structure here this afternoon of justification and support for the decision that we're able to make, that i'm not sure if you had as much good information in front of you as we now had here. But we had some very good testimony today, it was really helpful, really helped clarify that we do have this opening to interpret the law and the code in this way, and I think it's very reasonable that we do so. Aye.

Saltzman: Commissioner Francesconi, I wish I could agree with you that because to decide otherwise defies common sense, but in the year and a half i've been here, particularly in the land use arena, I find myself always force in addition decision that's often define common sense, but that's what the code says. As much as I agree with you on the sentiment, I can't cite that as my basis. I do believe, and I think pdc did its job, bringing this clearly a gray issue forward, but I think i'm going to rely on nancy sideras's statement, which I think crystallized it for me, they could have said single family dwelling unit, instead they chose to say, they being the legislature, single unit housing unit. And I think there's a big difference between that, and i'll have to say that difference must be intended to get this result of a broader construction. I'm still bothered by ors 458.050, sub 1, because that contradicts everything we're doing here, but i'm going to buy the arguments of your attorney and also i'm going to assume that's an artifact and that really is defined—designed to deal with single family dwelling units being subdivided into— so I also am going to support these applications. Aye.

Sten: I think the staff did the right thing in going to— when things are unclear, going to our code is a smart thing to do. However, on a legal standpoint, I don't think we have to do that. I think what we have to do is follow the state law. You made a good policy choice to try to figure out how to do it. As I go to the state law, it's clear to me that unit is not defined, and I think it's reasonable to take the legal approach that a unit is what we have in these two cases. I think it can be sold, it can be bought, it will be sold and bought, it will be lived in by one single family. It

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frankly really meets the intent of the code much better than anybody could build a stand alone structure today. My number 1 cause for concern with this statute over the last couple years is as the price has escalated, you can build a \$150,000 under this statute and not pay taxes on it. I don't think there's any way short of huge grants to ratchet \$150,000 house down to the people who are trying to help with this. So I think the times have suppressed the statute. Here we have two developers who have built at 102 and 124, and are getting at income levels below what our stated city goals are. Our stated goals are to help homeownership at 80% and below, and even the more expensive units are getting 10% below this. We have a lot of money in the knott street homes aside from the tax abatements, we have nothing in terms of city subsidy. These to me are just stellar contenders for how to meet city goals with very minimal subsidy, which is tax abatement. I understand the technicality, but I think they meet the intent of the law. The things i'm going interested in in the next round is really maximum price and the question I understand ed's argument, but the question commissioner Francesconi has raised, if we're going to get a tax—certain level buyer in there, should we expect that to go away if the house rolls to somebody who isn't that buyer. There's a lot of issues there. But those are the kinds of things i'd like to look at. For me it's very clear these meet the intent of the state statute, and I think there's a very reasonable way for this council to interpret itself, that the technicality can—it doesn't need to be an absolute roadblock. I'm pleased to vote aye. I think officially—that passes, and Britta, I suppose legally we just vote order 865. So let's roll call on 866.

Olson: You're going to make a motion to overrule?

Sten: Yes.

Hales: So moved.

Sten: Aye. The motion passes. And thanks, everyone. We look forward to the new policy and the next—in the next couple months. Britta, could you read 867, please?

Item No. 867.

Sten: This is findings, and let me double-check. I intend to abstain because I wasn't here last week. Was everybody here?

Hales: Yes.

Sten: So we have three votes for this. I have not reviewed the record, so i'll abstain. Is everybody satisfied with the findings? Could everybody take your conversations outside? We're still conducting business. Thanks.

Francesconi: Can I have just a minute?

Sten: Can we pause for just a minute? This is a land use case that was here last week, and we have findings before us.

Hales: Do you want to describe what if anything has been done to revise the findings?

Duncan Brown, Office of Planning and Development Review: opdr. Last week you took action to uphold the hearings officer's decision adopting—adopt his findings and ask that an additional condition be added that's condition g on the second page of your findings and decision that's before you. And we added some findings on the first page, center of the first page to support that particular condition.

Saltzman: Where is the finding g?

Brown: condition g, the last condition.

Hales: Shall not sell the subject property until 30 days -- okay.

Francesconi: I've reviewed it now.

Hales: That's the one.

Sten: I know there's some people here. We don't usually take testimony in findings.

Francesconi: We've been through this.

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Sten: Let's take a roll call. The hearing was last week. This is just a result on the votes. Why don't you come up and sit at the chair. We've—we'll address this. Just give us your name and your request.

Donna Babbitt, St. Johns Neighborhood Assn.: 9441 N. Willamette Blvd., 97203. I'm Donna Babbitt. I spoke here last Thursday. With the other folks from the St. Johns area. I had faxed a letter yesterday, I just wondered if you've gotten it, because I think people walked away thinking that truly the port was going to come back in 30 days after the recorded record of the consent decree, and with that then merchandise Katz had ordered some looking into submersible lands. And when the motion in the—and the confusion of the end of that session was taken, it was an actual ruling, apparently, against us, the appellant, St. Johns. So I think people walked away confused, and yet the whole conversation during that hearing was talking about the breaking of the state law, the violation of the state law that we discussed, and then of course with the settlement, the findings of removing a certain amount of fill.

Sten: Let me—I wasn't here, so anybody feel free to chime in. What we've got is the council made a decision, and once a council makes a decision we vote on findings.

Hales: The question in front of us now—

Sten: I can't reopen the case.

Hales: The question now is whether the finding in front of us reflects the decision we made at the hearing. That's the only question in front of us.

Babbitt: From everything we brought to you Thursday, it wouldn't reflect it, because the lots—we told you about once those lots are the illegal fill is removed, it then changes the whole landscaping and the whole scenario.

Hales: But we took testimony on those issues, and we made—I think I can speak for the rest of the council, I made my decision having taken those issues into account. I isn't the rest of the council did too. Now the question is, we made a decision, we modified that decision with a new condition, I think it was suggested by some of your members, you didn't—obviously you didn't prevail on the overall question, but we did make the change in this condition. The question is, are the words of that condition right for what we said we wanted to do with the condition. 30 days, you've got to wait until 30 days after the settlement agreement before you sell any of the property.

Babbitt: That's what I wrote in the letter, to tell you about the change of the whole landscape that's going to hatch. Right now the St. Johns neighborhood association is in the appeal process to then challenge the conditional use type III. By put—I put in this letter if there's anything you could attach to the motion at very least would be once—once that is finalized, once the fill is removed, to then have the port come back and revisit the issue about the submersible lands and the violation of the state law, and then thirdly, make the replatting of that land not a type I, but a type III.

Sten: And I—

Babbitt: Can that be done?

Sten: I understand—I don't understand the case, but I understand the request. The request is to modify the findings. At this point we've got findings the council voted on, so I'm going to ask the council if there's any motion to change the findings.

Hales: I'll move their approval.

Sten: In that case—is there a second?

Francesconi: I'll second to.

Sten: I understand the question—the request, but the case was decided last week.

Francesconi: The condition that I put on was suggested by the person who filed the lawsuit. Who was part of your team representing this. And that satisfied him. The reason is then the decision of what is submersible or not, will be taken care of before the judge. This will allow the subdivision

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to go through, which is what I believe the right result is. You can disagree with me, and you still have your appeal, but I think this is the right approach. The other back stop is if it turns out it is submersible, this—he doesn't—they don't have the right to do it anyway and this can be revoked. Aye.

Hales: Aye.

Saltzman: I recall the discussion about the issues you raised. I do recall we did not take a position on the issue of the conveyance. As I recall, we—sometimes common sense alludes us. It seems to me it was clearly within—not within our purview to make a decision about. Although I may agree with you, that didn't seem to be the issue that was at hand today. Aye.

Sten: Abstain. I was not here. The motion passes. And council is adjourned.

At 3:35 p.m., Council adjourned.