



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **3<sup>RD</sup> DAY OF SEPTEMBER 2014** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fritz, Novick, and Saltzman, 4.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Chief Deputy City Attorney; and Jim Wood, Sergeant at Arms.

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

		<b>Disposition:</b>
<b>COMMUNICATIONS</b>		
<b>905</b>	Request of Craig Rogers to address Council regarding Citizen Committees (Communication)	<b>PLACED ON FILE</b>
<b>906</b>	Request of David Davis to address Council regarding solutions to homelessness (Communication)	<b>PLACED ON FILE</b>
<b>907</b>	Request of Mitchell Bailey to address Council regarding Gateway and Portland Development Commission's actions (Communication)	<b>PLACED ON FILE</b>
<b>908</b>	Request of Travis Williams to address Council regarding Portland Harbor Superfund and the Willamette River (Communication)	<b>PLACED ON FILE</b>
<b>909</b>	Request of Helgi Olafson to address Council regarding Portland Puddle Jumper Youth Triathlon and Fun Runs (Communication)	<b>PLACED ON FILE</b>
<b>TIMES CERTAIN</b>		
<b>910</b>	<b>TIME CERTAIN: 9:30 AM</b> – Proclaim September 2014 as Hunger Action Month (Proclamation introduced by Mayor Hales and Commissioner Saltzman) 20 minutes requested	<b>PLACED ON FILE</b>
<b>*911</b>	<b>TIME CERTAIN: 10:00 AM</b> – Authorize the renaming of N Winning Way within the City of Portland to N Ramsay Way (Ordinance introduced by Commissioner Novick) 30 minutes requested <b>Motion to add emergency clause in order to move expeditiously for the public good:</b> Moved by Fritz and seconded by Saltzman. (Y-4) (Y-4)	<b>186793</b> AS AMENDED

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<p><b>912</b>     <b>TIME CERTAIN: 10:30 AM</b> – Accept the report of the Chief Administrative Officer for the Quarterly Report of the Technology Oversight Committee (Report introduced by Mayor Hales) 30 minutes requested</p> <p><b>Motion to accept the report:</b> Moved by Saltzman and seconded by Fritz.</p> <p>(Y-4)</p>	<p><b>ACCEPTED</b></p>
<p><b>CONSENT AGENDA – NO DISCUSSION</b></p>	
<p><b>Mayor Charlie Hales</b></p> <p><b>Office of Management and Finance</b></p>	
<p><b>*913</b>     Pay claim of Eric Olenslager in the sum of \$67,500 involving the Portland Fire Bureau (Ordinance)</p> <p>(Y-4)</p>	<p><b>186780</b></p>
<p><b>*914</b>     Amend contract with Nelson Capitol Construction Program Management, LLC in the amount of \$30,000 to provide additional construction project management services at the Veterans Memorial Coliseum (Ordinance; amend Contract No. 30002669)</p> <p>(Y-4)</p>	<p><b>186781</b></p>
<p><b>915</b>     Extend term of a franchise granted to MCI Metro Access Transmission Services, Inc. to build and operate telecommunication facilities within City streets (Second Reading Agenda 880; amend Ordinance No. 169230)</p> <p>(Y-4)</p>	<p><b>186782</b></p>
<p><b>916</b>     Extend term of a franchise granted to Electric Lightwave, Inc. to build and operate telecommunication facilities within City streets (Second Reading Agenda 881; amend Ordinance No. 170283)</p> <p>(Y-4)</p>	<p><b>186783</b></p>
<p><b>917</b>     Extend term of a franchise granted to tw telecom of oregon llc to build and operate telecommunication facilities within City streets (Second Reading Agenda 882; amend Ordinance No. 171566)</p> <p>(Y-4)</p>	<p><b>186784</b></p>
<p><b>918</b>     Extend term of a franchise granted to McLeodUSA Telecommunications Services, Inc. to build and operate telecommunication facilities within City streets (Second Reading Agenda 883; amend Ordinance No. 175061)</p> <p>(Y-4)</p>	<p><b>186785</b></p>
<p><b>919</b>     Extend term of a franchise granted to XO Communications Services, Inc. to build and operate telecommunication facilities within City streets (Second Reading Agenda 884; amend Ordinance No. 175062)</p> <p>(Y-4)</p>	<p><b>186786</b></p>
<p><b>Commissioner Dan Saltzman</b></p> <p><b>Position No. 3</b></p> <p><b>Portland Fire &amp; Rescue</b></p>	

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<b>920</b>	Authorize contract with Burlington Water District for fire prevention, suppression and emergency response services for FY 2014-15 (Second Reading Agenda 885; Contract No. 30004035) (Y-4)	<b>186787</b>
<b>921</b>	Accept a donation of a cargo trailer from the Shirlee Ann Foundation (Second Reading Agenda 886) (Y-4)	<b>186788</b>
<b>Commissioner Steve Novick</b> <b>Position No. 4</b> <b>Bureau of Transportation</b>		
<b>*922</b>	Authorize an Intergovernmental Agreement with Portland State University for shadow train streetcar service to and from the Cooperative Life Sciences Building (Ordinance) (Y-4)	<b>186789</b>
<b>*923</b>	Authorize a Development Agreement with Hoyt Street Properties, LLC to ensure the construction and timing of full street improvements for three properties in NW Portland (Ordinance) (Y-4)	<b>186790</b>
<b>Commissioner Amanda Fritz</b> <b>Position No. 1</b> <b>Portland Parks &amp; Recreation</b>		
<b>*924</b>	Authorize a Sponsorship Agreement with SJW Inc. for De La Salle North Catholic High School work/study internship program (Ordinance) (Y-4)	<b>186791</b>
<b>Commissioner Nick Fish</b> <b>Position No. 2</b> <b>Water Bureau</b>		
<b>925</b>	Authorize a contract with Cadre, Inc. for site specific and practical training related to Hazardous Materials Operations, Emergency Response, and Wilderness and Primary Responder in the amount of \$126,000 (Second Reading Agenda 891) (Y-4)	<b>186792</b>
<b>REGULAR AGENDA</b> <b>MORNING SESSION</b>  <b>Mayor Charlie Hales</b> <b>Office of Management and Finance</b>		

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<b>926</b>	Accept bid of Moore Excavation, Inc. for the Sellwood-Moreland Sewer Rehabilitation for \$8,902,765 (Procurement Report – Bid No. 116985) <b>Motion to accept the report:</b> Moved by Fritz and seconded by Saltzman. (Y-4)	<b>ACCEPTED PREPARE CONTRACT</b>
<b>927</b>	Accept bid of PCR, Inc. for the Road 10 MP .6 – 1.8 project for Portland Water Bureau for \$736,837 (Procurement Report – Bid No. 117045) <b>Motion to accept the report:</b> Moved by Saltzman and seconded by Fritz. (Y-4)	<b>ACCEPTED PREPARE CONTRACT</b>
<b>928</b>	Modify and update specifications for the City of Portland flag (Second Reading Agenda 876; amend Code Chapter 1.06) (Y-4)	<b>186794</b>
<b>929</b>	Repeal outdated City Code chapters relating to Civic Stadium and Portland Zoo (Second Reading Agenda 895; repeal Code Chapters 20.24 and 20.28) (Y-4)	<b>186795</b>
<b>Commissioner Steve Novick</b> <b>Position No. 4</b> <b>Bureau of Transportation</b>		
<b>930</b>	Authorize Bureau of Transportation to grant easements on City fee-owned land to Portland General Electric (Second Reading Agenda 897) (Y-4)	<b>186796</b>
<b>Commissioner Nick Fish</b> <b>Position No. 2</b> <b>Bureau of Environmental Services</b>		
<b>931</b>	Authorize Joint Funding Agreement between the Bureau of Environmental Services and the U.S. Geological Survey, U.S. Department of the Interior for hydrologic monitoring in Johnson Creek, Columbia Slough, Willamette River, Fanno Creek and Tryon Creek for \$463,130 (Second Reading Agenda 898) (Y-4)	<b>186797</b>

At 11:22 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2014 AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Fish, Fritz and Novick, 4.

Commissioner Fish arrived at 2:05 p.m. and Commissioner Fritz left at 4:01 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Lisa Gramp, Deputy City Attorney; Linly Rees, Deputy City Attorney at 3:00; Mike Cohen, Sergeant at Arms at 2:00 p.m. and 3:15 p.m.; and John Paolazzi, Sergeant at Arms at 3:00 p.m.

The meeting recessed at 2:47 p.m. and reconvened at 3:02 p.m.

		Disposition:
<b>REGULAR AGENDA AFTERNOON SESSION</b>		
<b>Mayor Charlie Hales</b>		
<b>Bureau of Police</b>		
<b>*932</b>	Accept and appropriate a grant in the amount of \$170,000 from the Oregon Department of Justice and the Oregon High Intensity Drug Trafficking Areas program for sworn personnel overtime for Portland interdiction efforts (Ordinance) 15 minutes requested (Y-4)	<b>186798</b>
<b>*933</b>	Accept and appropriate a grant in the amount of \$36,000 from the Oregon Department of Justice and the Oregon High Intensity Drug Trafficking Areas program for Portland interdiction efforts (Ordinance) 15 minutes (Y-4)	<b>186799</b>
<b>*934</b>	Accept and appropriate a grant in the amount of \$25,000 from and authorize a Letter of Understanding with the Oregon Department of Justice Criminal Justice Division for sworn personnel overtime for domestic cannabis eradication and suppression efforts (Ordinance) 15 minutes requested (Y-4)	<b>186800</b>
<b>Commissioner Dan Saltzman</b>		
<b>Position No. 3</b>		
<b>*935</b>	Authorize a grant agreement for \$100,000 with David Douglas School District No. 40 to support the Earl Boyles Early Works program (Ordinance) (Y-4)	<b>186801</b>
<b>Commissioner Steve Novick</b>		
<b>Position No. 4</b>		

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**Bureau of Transportation**

<b>*936</b>	Amend the local improvement district boundary of the N Vancouver Ave and Cook St Local Improvement District (Ordinance; C-10047) (Y-4)	<b>186802</b>
<b>*937</b>	Approve an agreement with Karuna Properties II, LLC in the amount of \$70,885 to construct a mast arm traffic signal at the intersection of N Williams Ave and N Fremont St in the N Vancouver Ave and Cook St Local Improvement District (Hearing; Ordinance; C-10047) (Y-4)	<b>186803</b>
<b>*938</b>	Approve an agreement with Karuna Properties II, LLC in the amount of \$172,885 to construct a mast arm traffic signal at the intersection of N Vancouver Ave and N Fremont St in the N Vancouver Ave and Cook St Local Improvement District (Hearing; Ordinance; C-10047) (Y-4)	<b>186804</b>
<b>TIMES CERTAIN</b>		
<b>939</b>	<b>TIME CERTAIN: 3:00 PM</b> – Appeal of Woodstock Neighborhood Association against Hearings Officer’s decision to approve a zone change in conformance with the Comprehensive Plan and a 3-lot land division at 3936 SE Reedway St (Hearing introduced by Commissioner Fritz; LU 13-237078 ZC LDP) 1 hour requested	<b>CONTINUED TO SEPTEMBER 10, 2014 AT 9:30 AM TIME CERTAIN</b>

At 4:37 p.m., Council adjourned.

**LAVONNE GRIFFIN-VALADE**  
Auditor of the City of Portland



By **Karla Moore-Love**  
Clerk of the Council

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

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

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

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

**SEPTEMBER 3, 2014      9:30 AM**

**Hales:** Good morning, everyone, and welcome to the September 3rd meeting of the Portland City Council. Would you please call the roll, Karla?

**Saltzman:** Here. **Novick:** Here. **Fritz:** Here. **Hales:** Here.

**Hales:** Commissioner Fish is representing the Portland City Council at Vic Atiyeh's memorial service this morning and will be back this afternoon. I'm here this morning and will be gone this afternoon, so we'll have a somewhat rotating quorum but a quorum nevertheless for both the morning and afternoon session. Welcome, everyone. We will start with communications items in a moment and then move to the regular agenda. If you are new to this proceeding here, welcome to the council chambers. We have some basic rules of decorum, which is if you're representing an organization as a lobbyist, let us know. If you're coming to speak on an agenda item, usually you've got three minutes, and you simply need to give us your name -- you don't need to give us your address. We ask that if you support the testimony of somebody and you want to demonstrate that, do so with a hand gesture and wave your hands or something. But we like to give everyone the opportunity to have their say here regardless of whether their position is popular or not, so therefore we ask that you not make vocal demonstrations in favor or against your fellow citizens as they speak. We have a consent calendar up front. If there had been any requests to take consent items off the calendar -- I haven't heard any yet this morning. OK. So therefore we'll start with the communications items first, number 905.

**Item 905.**

**Hales:** Mr. Rogers, come on up.

**Craig Rogers:** Good morning. My name is Craig Rogers. I'm going to be speaking on citizens committees, but the street fee is pretty number one. And I'm a 37-year retired teamster. Worked for Coca Cola, represented those members as their primary legal counsel for 35 years. And thousands and thousands of members, really quite an experience. First of all, I'd like to thank Dan and Amanda. I appeared a couple years ago, and both of you helped me bring down derelict houses that were very close to the east Portland community center, and that has made a radical change. The update is that recently, a few months ago, that land was purchased, and they look to be siting homes on that land very soon -- they're in discussion with the city with regards to a new driveway and things of that. And actually in my retirement years, it's that east Portland community center that keeps me in shape. So, I really appreciate the park bureau. I've often found myself at the bargaining table with people of the caliber of Paul Romain. And the one item I brought to be handed out -- I'd like you to take a few moments when you have the time to read an interview that The Oregonian did with Paul. I consider Paul to be one of the sharpest pencils in the desk, and I think he had something that has valuable content to say that's worth a thought. About a month ago, I went to a sustainability talk. And Charlie, you were speaking there along with Mayor Ballard. And you said something that opened my eyes. You said that the way you deal with the public, you give them choices. And I thought, back in the day, you could get a model T in any color of your choice, as long as it was black. And they didn't have a choice. And that's what I see going on here with this street fee and the process. I've attended countless meetings, and I believe that the process is flawed in many ways. One of those being that 85% of the citizens aren't represented. When I asked a staff member, they said that AAA is sitting at the table. So I wish I could say that it got off on the wrong foot. I can't,

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because I feel from the beginning -- given the fact the citizens don't have a vote -- it never had legs. Thank you for your time.

**Hales:** Thank you. Next, please.

**Item 906.**

**Hales:** Is Mr. Davis here this morning?

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

**Hales:** No, no substitutes. Is he here? OK, come on up.

**David Davis:** [inaudible] -- about homelessness and also cancelling contracts with G4S security and to stop doing business with HSBC financial group who has to deal with money laundering [indistinguishable] --

**Hales:** OK, well, sit down and you've got three minutes. So, have your say.

**Davis:** I just got here. Maybe you can start the clock over again.

**Hales:** I don't think we have yet, so.

**Davis:** So you guys do business with HSBC, who were busted in 2012 doing money laundering with Mexican drug cartels and Middle Eastern terrorist groups. They were fined \$1.9 billion. \$1.9 billion for doing billions of dollars' worth of money laundering for Mexican cartels and terrorist groups. And as the City of Portland, you guys invest millions and millions of dollars with HSBC in the city financial portfolio. So I'm just wondering why you guys are doing business with people who do money laundering for Mexican drug cartels, who bring in most of the heroin and drugs into this community. And if you know about overdoses, more people die in this town through overdoses than the murder rate -- like three times that amount every year. And I know lots of people that have overdosed in this community. I'm just wondering why you guys do business with those guys. And G4S security, which does security for the city -- they run Israeli torture camps, where little kids are tortured and sexually assaulted and raped in these facilities that G4S run. BBC News recently canceled their contracts with G4S to provide security for them, and Bill Gates and the Gates Foundation recently divested in G4S. So I'm wondering, you know, if the city of Portland might be able to do the same thing, as far as cancelling contracts with shady mercenary terrorists that torture kids, you know? I was also here to talk about homelessness and the fact that 37% of all the bank foreclosures around here are vacant, and that you guys could get these houses for very cheap. And also, instead of throwing the money out to all these homeless help organizations that put 80% in their own pocket, maybe you guys could start buying up houses for a lot cheaper, like in the \$150,000, \$200,000 range, where you put down \$10,000 and make monthly payments, where you could actually house four to six people in each house instead of just throwing money out to all these organizations that basically just give the money to slumlords. [beeping]

**Hales:** Thanks very much.

**Davis:** You know? Maybe you can start some retail businesses too to help homeless people actually be employed and stuff like that. I'm just looking for some sensible solutions to all the problems in the city instead of just throwing money down the toilet, basically -- you know?

**Hales:** OK, thank you.

**Davis:** Which is what's happening, you're basically giving money to slumlords and to organizations that supposedly help the homeless, but then they drive around in these \$50,000 brand-new SUVs and nice vehicles, and you know, I don't see how a \$50,000 SUV is helping anyone.

**Hales:** I appreciate you bringing all of this to our attention. Thank you.

**Davis:** Well, does any of it actually sink in?

**Hales:** We'll certainly look into it. We appreciate you bringing it up.

**Davis:** You know if the city actually invested in housing, then it would be a solid investment, and the city would own property instead of just giving it to a bunch of homeless help organizations that line their pockets, you know?

**Hales:** Thanks very much. Next person, please, Karla.

**Item 907.**

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**Hales:** Mr. Bailey?

**Mitchell Bailey:** My name is Mitchell Bailey. As I said, I have already tried to get it to sink in to you people about pavement markings that have already been handing out donovan grabowski's number another those times. If the city can't seem to afford the pavement markings along with the quick drops, which I also requested last year at those times -- that's those blue signs you see to be put up at the -- for people getting off and out and in to go to work or the airport or Union Station. But other than that, it's like now I'm going to tell them -- tell the city the same thing, that it's like, OK, if the city can't seem to afford the quick drops along with TriMet cannot afford the quick drops, then why don't they just go on and go bankrupt and start all over? Because other than that, it's like I'm already going through trying to push these areas to get the striping done. And if the pavement markings can't seem to get done, then it's like it's already been deteriorating. And as I said, Amanda Fritz, I still want your in-laws' opinions about it. I'll root 'em on. Because other than that, it's like if they live within that area, I want them to speak out. Because then the crime rate is going to go up big-time. And the same thing, as I went to the transportation town hall, I said that I'm estimating a major fatality is going to happen out there one of these times. It's the 9800 block of Pacific. Because cars have been going on through parking and dropping off people there in the no-parking zone in the bus lane, and right there, I'm already seeing the buses going through and ramming the car right onto the tracks. Then they'll have three trains out of service, seven bus lines out of service. Then after that, I'm already seeing all fire departments all over. That'll be a five-alarm assignment to go on through and get those people off those trains. And I'm seeing the dispatchers saying, sorry, your mother, father, grandfather, grandmother, brother, or sister, son or daughter, aunt or uncle's gonna have to pass away. Why is that? That's all because fire departments are all at Gateway at the 9800 block of Pacific. So other than that, as I said, I want to still see those quick drop signs. I've already talked to TriMet, and it's like TriMet keeps saying they can't do anything about it. And as part of public relations that it's like, we're trying to get it so they're livable, and these other places people need to be assured that they're going to be keeping their places, like at 636 NE 99th Avenue. [beeping]

**Hales:** OK, thanks very much. Next, please.

**Item 908.**

**Hales:** Good morning.

**Travis Williams:** Good morning. Mayor and Commissioners, my name is Travis Williams, I'm riverkeeper and executive director for Willamette Riverkeeper. I appreciate this quick three-minute opportunity to talk to you a little bit about the Portland harbor superfund site. I know all of you have a good working knowledge of this -- as do I -- given the site was listed almost 14 years ago. I want to present to you this booklet that you just received that the Audubon Society of Portland and Willamette Riverkeeper just published. We're going to be making a push over the next year of and a half -- hopefully not too much longer than that -- as the superfund clean-up process gets to the pivotal stage of deciding what kind of clean-up we're going to have when the draft plan comes out. The purpose of this booklet is to let the average Portlander and whoever else who would want to know about the contamination issue in the river and the methods that might be considered to clean it up and to provide them some opportunities to weigh in on the process. We're hoping to encourage the U.S. EPA to make a responsible decision that will protect the long-term health of the Willamette River in this area. I think that the city of Portland has a really critical role to play. The city has been a different kind of potentially responsible party to date. I certainly hope the city will continue to do that, and I have no reason to believe otherwise. I know both on the cleanup front as it relates to river mile 11, and also on the NRDA front -- the Natural Resource and Damage Assessment Process -- you continue to exert leadership. And frankly, I think we're going to need that. When push comes to shove here, when the draft plan is issued and eventually the record of decision, the city is going to have to I think make a bold stand and maybe a little more so than you'll see from the other PRPs. So I look forward over the next year or two -- our organization and many others, again, partnering

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with Audubon in this case to educate people about what the reality is with 10 miles of contaminated sediment today in the Willamette River, and to provide information about the choices -- which are going to be tough. One of the things I've learned in this is that none of the solutions to this clean-up are perfect. Not one. My hope is that we can remove as much contaminated sediment from the river as possible. And that certainly comes with some trade-offs. So again, we look forward to working with you guys and continuing to make progress for this cleanup. The feasibility study is going to be finalized here very shortly, and that'll give us a good sense of where things are going. Thank you.

**Hales:** Thank you. Appreciate your advocacy. This is a nice piece. It will help inform people. I think you called it correctly in terms of where the council is on this issue. I think our principle frustration, frankly, is the slow pace at which the EPA is moving to make those decisions. So your advocacy will help there, I think. The other plea I would make to you and other advocates is in addition to this advocacy about the cleanup itself, I hope you'll continue to advocate to our congressional delegation to put the fund back in superfund by restoring the oil polluter tax that used to pay for it. Because right now, it's an unfunded mandate. We're prepared to do our part, but it would certainly make it go better and more swiftly if Congress refunded the superfund.

**Williams:** Right. Although not to push back on that -- but it is really a polluter paid law. The fund was never intended to cover the expenses of the cleanup. So those with liability or some connection to the contamination, they're the ones on the hook. And it's no different than me buying a house and not doing due diligence and having a leaky oil tank. I own the house, I own that problem. One other thing if you will --

**Hales:** They could pay for the federal share, for example.

**Williams:** I do think there's a danger in having it seem like the EPA is the cause of all the delays in this process -- because truly, it is not. The most recent one, yes. But I think there's -- it's kind of a slippery slope.

**Hales:** Yeah, and we're not looking for a -- [indistinguishable] -- we're working very effectively with EPA, but I think all of us want it to happen sooner rather than later. That's why we hope on the NRDA front we can move more quickly.

**Williams:** Yeah, it's much appreciated.

**Hales:** So I think there's a lot of agreement here, but if Congress would lubricate the process a little with appropriations, it wouldn't hurt.

**Williams:** That would help.

**Hales:** Thank you.

**Williams:** Thank you.

**Hales:** Thanks, Travis.

**Item 909.**

**Hales:** Come on up. Good morning.

**Helgi Olafson:** How are you this morning?

**Hales:** Good.

**Olafson:** Great. It's been a very interesting experience so far, I have to say.

**Hales:** Well, good. Glad you're here.

**Olafson:** I am an endurance athlete with an autoimmune arthritis called ankylosing spondylitis that involves fusion of the joints, and I go around North America and race and raise awareness for arthritis and promote exercise as medicine. So back in January of this year, I decided to start Portland Puddle Jumper, which is a youth triathlon benefiting youth arthritis in the Portland area. Our nonprofit partner is Randall Children's Hospital. And so basically, I just wanted to come in front of City Council and kind of let you all know that this is happening in north Portland, and it's a great opportunity for the youth to kind of start forming healthy habits, getting outside, enjoying mother nature, being a part of exercise. And there's so many kids that have arthritis, people don't even know about it. So another side of this thing is that it's an educational experience involving seminars on juvenile arthritis at Randall Children's Hospital the day before the race. So I'm kind of

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requesting to see if there's any way that the city council can help advocate for us, and bring this to more visible light. Because I'm just one guy, and I have a race committee and all these things, but you guys are very powerful, in my opinion, and you have the leads that I don't really. So Portland Puddle Jumper will have 474 youth participants and about a thousand spectators in the Portland area. As concern for the city, Lombard will be shut down partially, but it's basically -- the lane will move into -- the turn lane will be the northbound lane and the southbound lane will be just the regular. And then the bikers will be coming around that property there, as you see on the back of the map. I don't really know if there's much else I can say about the race, except I think that it's a great opportunity, and if anybody knows any kids or people that want to get involved and volunteer, we have a website, portlandpuddlejumper.com, and everything is on there. Also, if anybody's interested, we're selling 300 lunches tomorrow as a benefit for this race at Western Bikeworks from 11:30 to 2:30. And they're prepared by me, I'm a master chef food judge -- I work for master chef as well -- and it's going to be a great opportunity to come and get some food and support the kids.

**Hales:** It looks like a great event. The parks commissioner looks like she has an idea or two to suggest.

**Fritz:** Well, it's portlandpuddlejumper.com. When is the race happening?

**Olafson:** September 28th.

**Fritz:** And is registration still open?

**Olafson:** Yes, it's open until September 21st. So we're really actually kind of under the gun because building the race has been very tough, being that it's an inaugural event. We just got into the positive with our budget, so now the focus is really to fill the race up. So we really need youth participants as much as possible.

**Hales:** One suggestion I'd make -- Commissioner, I ran into a friend of yours last night, Roy Pittman, the amazing youth coach at the sister community center just down the road at Peninsula Park. I'd urge you to stop by and see Roy there at that community center, because if there was one person who could put you in touch with more kids than anyone else, I suspect it would be him. And he's taught wrestling in particular to thousands of kids at that community center. But just in terms of networking for people plugged into the youth system in the city, he and the people at youth services and Parks and Recreation will probably would be a great resource for you.

**Fritz:** I'd be happy to help with that.

**Olafson:** Sure. So, how would we connect?

**Fritz:** So, Tim Crail is the parks operations policy advisor. So you could stop by right now and talk to him if you'd like -- if he's there, I'm not sure -- he might be in a meeting.

**Olafson:** Tim Crail. OK, I appreciate it. Thank you very much.

**Hales:** Well, good luck with your event. Let's move to consent calendar then. I don't believe we have any requests to withdraw anything from consent calendar, so roll call on the consent, please.

**Roll on consent calendar.**

**Saltzman:** Aye. **Novick:** Aye. **Fritz:** Aye. **Hales:** Aye.

**Item 910.**

**Hales:** Commissioner Saltzman?

**Saltzman:** Thank you, Mayor. September is hunger action month, and we are going to read a proclamation to that effect. But before we do that, I'd like to invite special guests we have who will be talking about hunger action month and the efforts going on throughout the region to help those experiencing food insecurity in our community. We have with us Susannah Morgan, CEO of the Oregon Food Bank; Chris Wearn, community schools program quality coordinator from Metropolitan Family Services, which runs a number of SUN schools throughout the region; and Katie Lauderdale, who is the SUN school site manager for Madison High School. Welcome, all of you. And we will hear from them, we'll watch a short video, and then we'll read the proclamation and take some pictures. Why don't we start with you, Susannah?

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**Susannah Morgan:** Good morning. I'm Susannah Morgan, I'm the CEO of Oregon Food Bank, and I'm just delighted to be here. Some of you know, I am a fairly new Oregonian, and my family just purchased a house in Irvington this spring and could not have found a more welcoming community. I'm utterly delighted by the support we have found for the hunger work here in Portland. So thank you all very much, Commissioner Novick and Mayor Hales, we really appreciate the support you gave us working on disaster response and look forward -- well don't look forward, but intend to work very closely with you in the case of a large-scale disaster. And Commissioner Saltzman has been such a wonderful support and friend on the Portland Children's Levy, and an anti-hunger hero in my book. Hunger action month is a national campaign, championed locally by Oregon Food Bank and the hundreds of partners we have across the state and here in Portland. We are asking community members to step out and recognize the problem of hunger in this community, whether it's by advocating, by raising awareness, by making donations, or by volunteering their time and efforts to help work on fighting hunger. We look forward very much to working with the city during a repack shift on Pioneer Square on September 9th. That should be a lot of fun, and be very good at raising awareness. And we're looking forward to having the Mayor Hales' office come to the food bank on September 23rd. And remember to wear closed-toe shoes. [laughs]

**Hales:** I usually do, but thank you. [laughter]

**Morgan:** We're delighted that the city of Portland is raising this banner alongside the cities of Beaverton and Hillsboro, as well as the Washington County and Multnomah County are also issuing proclamations. So we're unified this year in support of the work against hunger. The scale of the problem is absolutely staggering. More than one in three residents in Multnomah County do not have the income to meet their basic needs. For kids, it's even worse. Although kids represent one in five of the population, one in four are living in poverty. I'm a mom, I have a 5-year-old and a 2-year-old, and the idea of my kids worrying about where their food would come from absolutely tears my heart out. And to think one in four of our kids are facing that situation is absolutely unacceptable. But I don't want to tell you the story, I'd much rather someone here in Portland who has faced these challenges tells the story. So we'd like to show you a short video of an amazing woman that we met in northeast named Mary Givens.

[video playing]

**Mary Givens:** There was a couple summers that we literally starved because my father deserted us -- he was somewhere up in Oregon and left us in Phoenix. And we couldn't get on welfare, we couldn't get any help because my mother had a husband. We lived across the street from a co-op company and they would throw all these potato chips out at one point back in the day, and we'd go and get that and that's what we'd eat. We had a pretty hard life, but I think it made me stronger though. When you're starving and you're eight and 10 years old, that can give you a very bad food complex. And I think that's why my brother got into cooking, culinary, and I learned a lot about cooking from him. They cut SNAP by \$11, and it doesn't seem like much, but I felt the difference. Because when you're paying for other things out of your disability, it goes kind of quickly. Most of my income is going for bills, just monthly living -- your rent -- so you're constantly falling behind. When you're on food stamps and you're a diabetic, it's hard to eat like you really need to eat because it's expensive. So there are a lot of seniors suffering. I feel like the older you get, you really need to eat much better. I cook a couple things for a couple people in here. I said, you can go to the food bank as well as I can, 'cause I go on the bus and pull a suitcase. You know, this food is available to you, go and get it. And I made the mistake much telling a couple of them, whatever you go get, if you want me to cook it, bring it to me, I'll cook it for you. I had a hard time getting out of that one for a minute. [laughs] But I did commit. We have potlucks, and I always bring two or three different dishes, always a cake. And most of the time what I cook -- it disappears. That's one of my joys I get from cooking -- when people eat it, eat it all. I need the food bank because it helps me keep my grandkids eating right, you know, and full -- for their development, and their mental growth. I said, if I'm going to live, I have to cook. Food is a joy. You know what I mean? It's a joy.

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[end of video]

**Morgan:** We're so grateful for Mary, but we also know that we couldn't meet the needs of Portlanders like Mary without the support and hard work of all of our partners, including the City of Portland. We think it takes a collective effort. And we'd particularly like to highlight one of those efforts today, the school pantry program, which is a collaborative effort between the Oregon Food Bank; multiple nonprofit partners, including the fabulous Metropolitan Family Services; the SUN community schools; Multnomah County; and most recently, through the Portland Children's Levy, the City of Portland. Food pantries provide a nutritionally balanced mix of fresh, frozen, and shelf-stable foods, including fresh fruits and vegetables -- which is a real effort of ours -- meats, beans, dairy, and whole grains. Families who access the school food pantries receive a three to five-day supply of food in addition to resources such as nutrition information and referrals to critical federal nutrition programs like SNAP. The pantries are designed as model pantries, incorporating the best practices in everything we know, such as offering nutrition and gardening education classes to clients and building parent leadership within the schools. In addition, they reach families that otherwise that would not have access to much-needed food assistance. With funding from the Portland Children's Levy, we will be able to expand services at seven current Portland school pantries, and open 11 additional school pantries. We anticipate being able to provide over 75,000 children and 37,000 primary caregivers like parents with healthy, nutritious food in the first year alone. Thank you for helping us make that possible. Also just want to thank you again for all of your support for the Waterfront Blues Festival through all of the years. We were very disappointed we lost our headliner this past year, but we will bounce back and we hope that continues to be a great partnership with the city. I'd like to turn this over to Chris to talk a little bit more about the partnership around school pantries.

**Chris Wearn:** Thanks. My name is Chris Wearn, program quality coordinator with Metropolitan Family Service. And MFS is partnering with Oregon Food Bank to put in place eight school food pantries, two harvest share programs, and we have 26 sites that offer after-school and summer meals. All of these are integrating into existing MFS SUN and Cafe community schools. I can speak first to the enormous need for this work in east Multnomah County where we're located. Before I really spent time in this community, I don't think I understood the impact hunger really has on student learning and student success. At most of these sites, over 90% of the families are on free and reduced lunch, up to one in five of the children are homeless. When our families are moving monthly, weekly, or even daily, food preparation and meal planning becomes almost impossible. I was fortunate enough to spend two and a half years at Glenfair Elementary as the MFS SUN coordinator, and I would ask students who were struggling to stay on task in the classroom, what can I do to help you be successful? I had students tell me "I am hungry" almost every day. For a lot of our families, there's not sufficient access to healthy foods in the neighborhood, even if they had the income. If you look at -- the USDA posts a map of where our food deserts are located. And most of these sites are in food deserts. This is an area where there's not a good access to a grocery store or a large supermarket. These are areas where often the 7-Eleven becomes a primary food source, where fresh produce that we might see in more affluent areas at major supermarkets isn't available. And these are disproportionately affecting our communities of color, they're disproportionately affecting our low-income communities. I've been into the homes of our families during holiday gift drives and during home visits, and I've seen the cupboards that are barely stocked, and often times what they're stocked with is what comes from a convenience store. So really, a lot of these families are facing triple threat of high mobility moving around, low-income, and low access to grocery stores that provide fresh produce as well as other healthy foods. But I can also speak to enormous impact that these food pantries make for our families. What's great about this partnership is that our MFS SUN site managers know the families, they know the school, they're there throughout the year, and they have the infrastructure and relationship to work with these families. They can come up with creative solutions to get food to families that can't make it in, things like backpack

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programs. Alongside OFB, we make sure our food pantries are open year-round, we emphasize healthy nutritious foods, we allow client choice, we even offer classes in gardening, nutrition, and effective shopping as well as cooking in our food pantries. One thing we really try to emphasize is culturally responsive outreach. We post all of our information in multiple languages, we use bilingual staff, and we recruit volunteers from the communities that we're serving. As Susannah mentioned, we provide resource referrals to connect folks who come into the food pantry with other resources. These include SNAP, but these also include wrap-around service like energy assistance, transitional housing, and fast track enrollment for Cover Oregon. At these pantries, we've really come to see and hear the gratitude from our families who struggle to put food on the table. We've seen their engagement in the school increase as we connect them with volunteer opportunities, adult classes, and social services. Many volunteer in the same pantry where they receive food. I'm reminded of Monique at Shaver Elementary, who came for four weeks in a time of need. And a month later, she was able to get a job and provide food for her own family, but she still came back to that pantry every week to volunteer. She packed food and served other people because she felt this was the biggest gift that she could give to families in crisis, because she knew how hard that was for her. At MFS, our mission is to help move people beyond the limitations of poverty, inequity, and social isolation. Through its innovative partnership with the Oregon Food Bank that we're able to address all three of these areas. Together, our vision is for a world where children aren't going hungry, where students have what they need to be successful in the school. We thank you for your support of this vision, and your continued attention to the issue of food insecurity -- one that is a reality for far too many of our children and families.

**Hales:** You know, I had the chance to visit your food pantry operation at Earl Boyles Elementary School on the day they were distributing food to their neighbors, and it was so impressive.

**Wearn:** Yeah. What you see on these families' faces and the engagement from the community can be --

**Hales:** Obviously needed and well-supported by mostly moms from that school that were doing the distribution. It was really great.

**Wearn:** Absolutely. Thank you for your support.

**Katie Lauderdale:** Good morning. My name is Katie Lauderdale, and I'm the SUN site manager at Madison High School with IRCO. I just wanted to thank you for the time to share some of the work that we're doing at Madison. We have a new food pantry site -- and I won't reiterate what Chris talked about, he spoke really eloquently about the work that's being done at all of our school-based food pantries -- but I wanted to share some information about Madison as a new school food pantry that's partnered with Oregon Food Bank. Since opening late last year, the Madison community food pantry has distributed approximately 1600 pounds of food a week, and sent home a week worth of food to over 200 people weekly. The typical family leaves our pantry with four to six grocery bags packed full of food -- and I mean full, because bags are limited for us. That food is made up of canned goods and dry goods, but also mostly fresh produce -- the vegetables and fruit that families don't often have access to -- and they love they're able to choose the fruit and vegetables that most interest their families, and especially their children. They also get things like eggs and milk, frozen vegetables, and meat. We're really happy to have things like oil and spices -- ingredients that are often forgotten but really necessary to creating a home-cooked meal -- and things like yogurt or treats for students when they get home from school after a long day of learning. We work really hard at our pantry to make families feel welcome, from the way our youth volunteers greet all of our families, to ensuring that families have choice in their food selection, or providing a children's play area in our waiting area that kids run to now when they come in the front door of our building. We want every Madison family to have an experience that honors their dignity and encourages them to view their student's school as an inviting space. When considering which stories to share with you, I can think of many, but two that rise to my mind and tell me we're doing a great work are these. The first happened at the end of July. We had to close our pantry for the month of August, because

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our school was being cleaned for student return in the fall. We notified families about the closure well in advance, and worked with them to identify alternative pantry options that were accessible to them. At our last opening in July, a woman who's come weekly who generally sits quietly in our waiting area and only speaks enough to get her food and go home came in and got groceries for herself, her Madison student, and her two younger children, and took them out to her car. Then she came back inside empty-handed and waited in line again. I assumed she had forgotten something or was hoping to get more, but when she reached my desk she said, I just wanted to say I'm really going to miss this. I said, oh, did we forget to connect you to another pantry that will work for you while we're closed? And she said, oh, no, I have that information, but I'm really going to miss all of your faces. I was stunned. Even with our limited interactions, the people in our pantry made a difference for her. Later that night when I was reflecting on the day, the woman's words reminded me of another story from our opening day. On our first day, a woman named Lena came to the Madison community food pantry. She's attended adult English classes at Madison every week, twice a week for almost a year. She came promptly from class and was the first person to shop on our first day. As she went through the pantry, she turned down many things, expressing with still limited English there was so much food and that what she had was enough. As she left to take the bus home she had two bags full of groceries, one in each hand, and she turned around to the whole room and said, we all leave rich. Lena's words summarized the work being done through the Madison community food pantry, work that would be impossible without the support of Oregon Food Bank, the City of Portland, and all of our partners and student volunteers. It's an honor to celebrate hunger action month, and to thank each of you for your support. Thank you for supporting a system that allows my team to do work that not only feeds and enriches our families, but feeds and enriches our entire community.

**Saltzman:** Thank you. Thank you very much. Thank you for all the great work you do. I'll read the proclamation, and then we can take a photo. Whereas, hunger and poverty are issues of grave concern in the United States, the state of Oregon, and the city of Portland; and whereas, the city of Portland and organization such as Oregon Food Bank care deeply about these residents experiencing food insecurity; and whereas, the city of Portland and Oregon Food Bank are committed to taking steps to raise awareness about the need to combat hunger in every part of Portland and to provide additional resources that Portland residents need; and whereas, the city of Portland is a critical partner in hunger relief efforts through its support of such programs as Meals on Wheels and school-based food pantries; and whereas, city of Portland employees supported Portland residents experiencing hunger through generous donations of emergency food and repacking more than 3000 pounds of food in the last fiscal year; and whereas, more than 670,000 individuals in Portland relied on food provided by the Oregon Food Bank network in the last fiscal year; and whereas, the Oregon Food Bank network distributed more than 9.6 million pounds of food last fiscal year in Portland through its network of food pantries, soup kitchens, shelters, and other community organizations; and whereas, the city of Portland joins Oregon Food Bank in bringing awareness and attention to the hunger concerns in our community and to encourage community involvement in anti-hunger efforts by joining together to repack emergency food at Pioneer Courthouse Square on September 9th, 2014; now, therefore, I, Charlie Hales, Mayor of the city of Portland, Oregon, the city of roses, do hereby proclaim September 2014 to be hunger action month in Portland and encourage all residents to observe this month.

**Hales:** Thank you.

**Saltzman:** I do want to add that I want to thank Stacy Brewster in my office for helping to organize the food repack event and working with the Oregon Food Bank. We have over 75 city employees signed up for next week, next Tuesday at 11:30 at Pioneer Square. I'm sure we could probably handle more city employees between now and then as well. Why don't we get a picture with the proclamation? [photo taken]

**Hales:** Thanks very much.

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**Item 911.**

**Hales:** Commissioner Novick.

**Novick:** Colleagues, citizens, last April, Portland and the nation and everybody in the world who cares about basketball mourned the passing of Dr. Jack Ramsay, the former coach of the Portland Trail Blazers, and in particular, the world championship 1976-77 Portland Trail Blazers. I was delighted when the Trail Blazers came up with a way to honor Dr. Jack Ramsay's memory. They suggested that we rename a street after Jack Ramsay, in particular, the street currently known as Winning Way that runs adjacent to the Veterans Memorial Coliseum -- site of that 1977 championship -- and the Moda Center, the current home to the Blazers. Now, we have a very deliberate process for street renaming in this city, and Kurt Krueger and I are going to walk you through that process. But I have to say, we did cheat a little bit last May. Now, it was perfectly legal, but we authorized the installation of temporary sign caps on the Winning Way street signs with the plaid Dr. Jack '77 patch. But now, we come to the formal renaming process, which as I said, is a deliberate -- very properly so -- process. It involves a significant amount of public outreach, and we began the public outreach process earlier this year with outreach to the northeast coalition of neighborhoods, the Lloyd TMA, outreach through the Office of Neighborhood Involvement, the Swan Island Business Association, the Portland Freight Committee, the Columbia Corridor Association, and veterans groups associated with the Veterans Memorial Coliseum. We also -- as required by city code -- convened a committee members to review the historical significance of the street and the appropriateness of the proposed name. And I offer my profuse thanks to the members of the historians panel -- Ann Schatz, sports announcer for the PAC 12 network; Wayne Thompson, author of Blazermania, this is our story; and Ed Washington, former metro councilor and community liaison for diversity advocacy at Portland State University, who is representing the committee today. We're going to hear from Ed; from Howard Shapiro of the Planning and Sustainability Commission; and also from Christa Thoresz, senior director of social responsibility for the Portland Trail Blazers. So I will now turn this over to our guest panel starting with Kurt, who will take us through the intricacies of the street renaming process.

**Kurt Krueger, Bureau of Transportation:** Good morning, Mayor, members of City Council. Kurt Krueger with the City of Portland Bureau of Transportation. It's my pleasure to be here today. This is my second renaming effort, and I'm pleased to be here for this one -- this one has been far less controversial than the last one and running very smoothly. A couple of you have been through this with us before, so you know this process, but I want to remind the public and those on council what the street naming process is. As Commissioner Novick alluded to, the City Code Title 17.93 is very specific on different steps to rename a street, and we do so not lightly. When Jack Ramsay passed away and the proposal came forward by the Blazers and Commissioner Novick to request the renaming, one of the challenges was the honoree had not been deceased for five years, and the city code requires that to be the case. So we recognized that and wanted to be transparent in that decision-making, so a resolution was brought of before council earlier this year to recognize that he had not been deceased for five years, and we were going to proceed with that application nonetheless. In addition, we also require a deposit to be made to the City Auditor's Office to cover the cost of mailing to all affected property owners. This is a unique situation in that the city of Portland owns the four properties that are abutting the street, and therefore we conducted that mailing internally, obviously, and got those signatures. As mentioned earlier, a historian panel was appointed by Commissioner Novick per code, and the historian panel met in late July to consider this request and forwarded a recommendation -- unanimous recommendation -- to the Planning and Sustainability Commission. A week ago -- Tuesday -- the Planning and Sustainability Commission met and unanimously approved and forwarded a letter of recommendation to City Council for this renaming effort. Provided that the city council votes today to support this renaming effort, PBOT will be moving very quickly to get these signs manufactured and installed and in place before the opening of the NBA 2014 season. Just a little bit of housekeeping. The code requires that the new

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signs be placed along with the old signs, so for a period of five years, we will be having the Ramsay Way sign on top of the N Winning Way sign. That helps with a little bit of confusion. And just a little bit of fun anecdote, everybody's on their smartphone and GPS these days -- we notified Google and all the other appropriate entities, so smartphone applications, Google maps, Siri will be able to tell you where to go to either street. So that will be done by us as well.

**Novick:** Kurt, I actually heard that Siri was excited about the renaming. [laughter] She's a big Blazer fan.

**Krueger:** So I will end there. You want to hear more from this esteemed panel than staff, so I'm going to turn it over to Christa Thoresz with the Blazers, followed by Ed Washington, and then Howard Shapiro with the Planning and Sustainability Commission. Thank you.

**Christa Thoresz:** Thank you, Kurt. Christa Thoresz with the Portland Trail Blazers. Mayor Hales, City Commissioners, thank you for these few moments to express remarks on behalf of the Trail Blazers and the Ramsay family. If affirmative, today's decision by you will give Dr. Jack Ramsay -- the hall of fame architect behind our NBA championship -- a prestigious and lasting place of honor in a city he loved very much. This has been a journey supported and guided by Commissioner Novick, and now culminates with the work of the historian panel. It was a deliberate and focused process with a number of important procedural steps along the way. But since last April 28th when we lost Dr. Jack Ramsay at age 89, Rip City has known in its heart that this was the right thing to do for someone who personified our spirit throughout his illustrious career. During his 10 years as Portland's head coach, Dr. Jack won 453 games, including that NBA championship clincher in 1977 just across the river in the Veterans Memorial Coliseum. It is truly a fitting tribute by the historian panel and by this elected body to rename the street adjacent to the Coliseum and the Rose Quarter from N Winning Way to N Ramsay Way. This morning, the Trail Blazers thank you, the Ramsay family thanks you, and Rip City thanks you for your consideration. We look forward to celebrating a positive outcome of the action put forth on today's agenda. Thank you.

**Ed Washington:** Good morning, Mayor Hales, Commissioners Novick, Fritz, and Dan Saltzman. The historian panel met on July 22nd of this year and found it important to consider the historical significance of Dr. Jack Ramsay, but also the significance of N Winning Way and the surrounding Rose Quarter area -- the historical significance. There are really a lot of wonderful things to say about Dr. Jack Ramsay. Before I recount some of those that the historian panel discussed, let me provide some context of what we now know to be the Rose Quarter. North Winning Way was created as development of the current Rose Quarter, which included the Veterans Memorial Coliseum and the Moda Center. Prior to the development of the Memorial Coliseum, the neighborhood from 1920 up to 1960 was a home to the majority of Portland's African American residents and business owners. However, by the '60s, many of those were relocated -- had to relocate because of the I-5 construction and the construction of the Memorial Coliseum. The historian panel also found it important to recognize the historical significance of the Veterans Memorial Coliseum, which was completed in 1960 and dedicated to the memory of our veterans of all wars who made the supreme sacrifice. Dr. Jack Ramsay was himself a Navy veteran before becoming the great Blazer coach he was that we honor today. In fact, one wouldn't expect to find a basketball coach -- even one with a doctoral degree in education from an Ivy League school like Penn -- to have a street named after him in Portland, Oregon. But Dr. Jack Ramsay was no ordinary coach, nor ordinary man. He was of hall of fame caliber, one of the 10 greatest coaches in pro basketball history who came to this city in 1976, and won for Portland the National Basketball Association championship in 1977. That the Portland Trail Blazers won that title in only its sixth season as a franchise is considered by many to be one of the biggest upsets in NBA history, and clearly the greatest single achievement in Oregon's 20th century sports history. And arguably, the man most responsible for giving Portland the new national market identity, the chief factor that separated in the national sense a Portland, Oregon from a Portland, Maine was Coach Ramsay. Dr. Jack was a good fit for Portland. That is, he was a bit quirky, he loved the outdoors, and really was

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biking long before it became a huge, huge thing here in Portland. He often walked the streets at night after losing games, and he was active athletically and physically until into his 80s. So in recognizing the historical significance of Dr. Jack Ramsay, the historian panel unanimously supports a proposal to rename N Winning Way to N Ramsay Way. Dr. Jack Ramsay is inextricably connected to the legacy of the Blazers franchise and to the passion of Rip City fans. So in closing, on behalf of Ann Schatz, Wayne Thompson, and myself -- those first two who could not be here today -- we appreciate Council's consideration to rename N Winning Way to N Ramsay Way. And if it's your desire to vote on it today, we would hope that it would have unanimous support for this wonderful idea. Thank you very much.

**Howard Shapiro:** Good morning. My name is Howard Shapiro and I'm the vice chair of the Planning and Sustainability Commission. Essentially, my work here is to pass along to you the fact that the commission voted unanimously and enthusiastically to make this name change. But I want to take a moment to reflect myself on where I was in 1977, and other than elder statesman Saltzman -- I don't know if any of you were here to experience the energy that was generated by this basketball team. Basketball, like anything, is just a game, and it has to be kept in perspective. But basketball gave Portland -- started out with the word Blazermania, but I really define it as Portland pride. I think that was the moment when we as a city -- and I'll never forget it that day -- came together in a way that even today celebrate things like the Waterfront Blues Festival, where we all show up and support something that we've honored for years, the Oregon Food Bank. And I really need to let those two come together, because they're all part of what I think we all take pride in: good citizenship. I never met Jack Ramsay formally, but I did meet him informally at Wallace Park when he was shooting hoops with Bill Walton about the day or two after he got here. And I want to tell you that he won the game. It was a game of horse, and he beat Bill with a jump shot from center court. [laughter] But I gloried in Ramsay and what he brought to both the team and the city. There was a moment you may all remember when the trainer laid the towel on the floor, and Dr. Jack kneeled down and then shepherded another winning game for the Blazers. I don't see anybody tall here today, but I do see an awful lot of people who remember -- I think remember -- something that started very important, and that is that Jack Ramsay gave us a good example of what a great citizen can be as well as a great sportsman. I'm quite taken with the notion that the two signs will remain above each other for five years. Jack Ramsay was a winner, and Ramsay and Winning go together. But there's something else here that I think's important. A lot of land was taken up for the Moda Center and displaced a lot of people. Hopefully, that will be a lesson to all of us in continuing to make Portland the kind of winning city that it really is. We all care deeply about it, and we all care deeply about the fact that good citizens are the pride of the community. Jack Ramsay was certainly one of those. So thank you, Commissioner Novick for asking me to come and speak personally and enthusiastically about this renaming. It's a very appropriate thing for a very wonderful man who gave us something that we all treasure, and that's Portland pride. Thank you.

**Hales:** Thank you.

**Novick:** Thank you all so very, very much.

**Hales:** Any questions for our panel? Is there anyone else signed up to speak?

**Shapiro:** Were you here, Dan?

**Saltzman:** I was graduating from college --

**Shapiro:** Don't tell me that -- [laughter]

**Saltzman:** I was back east.

**Shapiro:** And you all were just being born, is that what's --?

**Hales:** I wasn't here, I moved to Portland in 1979.

**Shapiro:** It was an incredible day in '77 when that team came through the city. An incredible day.

**Hales:** Great. Well, given we've had this unanimous decision by the planning commission, this great presentation, and no one else to testify, it might be appropriate to add a motion to take up a motion to add the emergency clause.

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**Fritz:** So moved.

**Hales:** Is there a second?

**Saltzman:** Second.

**Fritz:** And that would be in the interest of moving expeditiously for the public good.

**Hales:** I think so. Roll call, please.

**Roll on motion to add emergency clause:**

**Saltzman:** Aye. **Novick:** Aye. **Fritz:** Aye. **Hales:** Aye.

**Hales:** And then we can take action on the item itself. Roll call, please.

**Item 911 Roll.**

**Saltzman:** Thank you, Commissioner Novick, for your leadership on this, and thank you for all of your help, Blazers and Transportation, and the historian panel, and the Planning and Sustainability Commission. I think I've told this story before, but my dad was a very good friend of the Glickmans and I was friends with their family, and so we were one of the first season ticket holders for the Blazers. And professional basketball was kind of a newfangled thing for the city of Portland, and I remember sort of being dragged to these games and wondering, why am I here? And you know, the first few seasons were not really astounding. So it was an acquired taste for pro basketball for this city. It may be hard to recognize that now in retrospect, but for me, it was an acquired taste. And certainly I -- although I missed the championship here, I was graduating from college -- I certainly shared in all the excitement and enthusiasm and was watching the games on TV. And wished I could have been in Portland on the great day that they won, and the great parades that followed after. But Dr. Jack Ramsay, a great coach -- this is a very fitting tribute to his memory and to his winning ways. So I'm very pleased to support renaming this street N Ramsay Way. Aye.

**Novick:** I wasn't in Portland, but I was alternating between sitting on the floor and jumping up and down, bouncing around in Cottage Grove, watching that game. As Howard said, there are moments that stick with you throughout your life, and I will never forget how it felt when the last 76er shot fell short. And in the corner of my mind, the score will always be 109 to 77, and the Trail Blazers will always be the champions. It's a great honor to have the opportunity to honor a hero -- and Jack Ramsay was a hero. Not just because he was a great basketball coach, but because he was a great man. Here's something that Bill Walton, the leader of that championship team said not after Jack Ramsay died, but in 2007. He said, Jack's life is a beacon which guides us all. He is our moral compass, our spiritual inspiration. He represents the conquest of substance over hype. That's somewhat unusual language to hear in the sports world. That's how Bill Walton felt about Jack Ramsay. I really, really appreciate all of your work, and the work of the historian panel. I really, really appreciate that report Mr. Washington gave on behalf of the panel and everything in it. And I'm really glad that you took the opportunity to talk about not just the Blazers and Jack Ramsay, but the history of that area. I appreciate that Mr. Shapiro reiterated that. This is a grand day, and I feel sorry I have to say for people who either aren't as old as some of us, or who aren't sports fans -- because if you're old and you're a sports fan, it's wonderful to remember that team, and Dr. Jack Ramsay. So I not only vote aye, I also must say, Rip City alright! [laughter]

**Fritz:** Thanks to Commissioner Novick for bringing this, and to Kurt and the team for doing the process correctly -- that's always important, even for something that was obviously when we first passed the resolution that it was a great concept we wanted to follow through on. And thanks to the Planning and Sustainability Commission for giving it your usual due diligence, and to you, Mr. Shapiro, for calling out the issues with the area and the fact that everybody needs to be included. So I appreciate that. I was in college in England in 1977 -- had never watched a basketball game and had never heard of Portland, Oregon. So it just goes to show how people can come to Portland and be embraced, and sports is one of the ways that happens. It doesn't matter where you're from, if you can yell loudly at a sports game and if you can experience the joys and the sadness of a sports game in the way that we all experience life -- except that you get to yell and to boo in a sports game, and not so much in life as a general rule. So thank you very much, and I certainly honor the memory of

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Dr. Jack and how much love there is in this community for him. I'm very pleased that we're doing this name change. Aye.

**Hales:** Thank you, Steve, and thank you all. This is a fine piece of work, recognizing a great piece of Portland history and a person who has contributed to the life of our community a very durable way. So this is the right thing to do and as has been mentioned, done it the right way. We appreciate that. Back in 1912, Portland had annexed the cities of St. Johns and Sellwood and east Portland and Albina, and the city engineer was tasked with sorting out the mess of four or five Main Streets and three or four Elm Streets and so on. And there was something in those days which he brought forward called the great renaming, because they had to sort out the mess. And so they did it, they did sort out the mess and now we have one Main Street and one Broadway -- though it takes a dog leg, as we all know. But this is a great renaming in a whole different sense of the word -- a great Portlander, a great moment, and many great moments around those years with the Blazers. So I'm really proud that we've done this. I look forward to walking down Ramsay Way to the next Blazer game. Thank you all. Aye. Howard?

**Shapiro:** Mr. Mayor, may I add something else? There was another winning testimony today. At one point years ago, I was the chair of the Food Bank. And I watched today a successful -- a successive food bank administration again come before you and ask to do the right thing that Portland has been doing for hungry people for years and years. So this is a winning situation with Dr. Ramsay and the renaming, but there's another winning thing about Portland, that's the continuation of support for the Food Bank. And I really wanted to say that, because I was so gratified and elated to see the beat goes on, and the care continues, and the city is Portland proud. Thank you.

**Hales:** Thank you. It's a nonprofit that's had great leadership for years, so thanks for your contribution to that. Thanks very much. Alright, let's take up 912, please.

#### **Item 912.**

**Hales:** Alright. Director Berry and his team are coming up. Good morning.

**Kelly Ball, Office of Management and Finance:** Good morning, Mayor and Commissioners. My name is Kelly Ball, I'm with the Office of Management and Finance. We are here this morning to present information from the Technology Oversight Committee's quarterly report. This report spans April through June of this year. As you know, the TOC is made up of five community members, each appointed by city council members. Currently, there's one vacancy, and we're working with Commissioner Fritz to fill that vacancy. Today, Ken Neubauer, who is a TOC member and an infrastructure manager with Standard Insurance will be joining the Chief Technology Officer Ben Berry in providing you with updates on the six projects under TOC oversight. Before we get started on that, I want to mention the other three members who are TOC members. Wilfred Pinfeld, Joshua Mitchell, and Colleen Gadbois. We're going to be projecting the dashboards that are in your report so people can follow along. And then each of the dashboards contains information from project management staff, quality assurance contractors, as well as the TOC. And with that I would like to turn it over to Ken to kick off the first project.

**Ken Neubauer:** Good morning, Commissioners and Mr. Mayor. I'm pleased to be here to represent the Technology Oversight Committee. The first project we have is the Bureau of Development Services, their information technology advancement project, ITAP. The TOC has some concerns around the lack of accurate project schedule, which has implications for other areas in this project. There are some key accomplishments around phase one, including communication plan and their decision log. Technical and functional requirements, and data conversion processing has begun. The vendor is working through some phase two deliverables for finalizing the project requirements, though some deliverables are falling behind the schedule. The vendor is beginning to put more resources towards this project, which is needed. The BDS bureau director is involved in biweekly calls with the vendor. Some of the risk and concerns we have -- first around the schedule. The vendor, Sierra, has provided faulty assumptions to the original formal project plan and schedule,

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which was significant oversight. The vendor is bringing in extra resources to compensate, but the project still lacks revised project schedule for phase two and phase three, which represents the bulk of the project. The bureau is actively applying pressure, but this remains an area of concern for both the TOC and QA. On budget, there's good amount of contingency built into the budget, but if the schedule slips significantly, that could ultimately impact the budget. Scope. There's discussions about breaking some of the scope into different phases. The bureau is requiring the full original scope be implemented, but the timing could change. Next project is the affordable housing -- I'm sorry.

**Ben Berry, Chief Technology Officer, Bureau of Technology Services:** Thank you, Ken. I'm Ben Berry, I'm the Chief Technology Officer for the City of Portland. As Ken gives the major highlights, I'll give some additional input as of known to date about each project so that the committee actually has more current information as well. If you turn to the actual charge, the dashboard, we'll be presenting six projects today and three will have dashboards. So if you look at the first dashboard, the QA is tested for the schedule, expected completion for QA is showing a red for June. And the TOC assessment is consistent with that in red for the period of April through June of 2014. And when we look at the schedule, the one thing that turned out in terms of our discussion at TOC was there's a lot of complexity in the ITAP project that the vendor, Sierra Systems, may not have anticipated early on. So we believe even though they've promised the customer a detailed full schedule between now and the end of the project -- which I believe is at the December 2015 -- we're still waiting for a much more detailed comprehensive schedule, which is leaving us with these particular reds in for QA assessment and TOC. If you look at the budget, QA assessment still shows it in green, because we do have some contingency available to the project, which is green from a QA perspective. But TOC's recommendation is a yellow, because there's still some unknowns with the schedule. So the schedule complexities don't align itself into a budget, into a schedule that can get us through December 2015. That might challenge the budget, so that's why the TOC is showing yellow for budget. And then of course, the scope. QA is showing that in the yellow today in terms of June of 2014, but the TOC is also showing it in yellow as 2014 for June. But we're still concerned about the turnover of the Sierra System staff -- so 15 members of the technical staff and project manager, 14 have been turned over by the customer, by the vendor. So that is a big a-ha for the TOC. Did you have anything else to add?

**Neubauer:** No, that's all. Thank you, Ben.

**Hales:** We might want to let you go through your report and then also hear from the bureau. I see Paul is here and some of his team. So it's obviously a big project, you've raised some serious concerns. There's a lot much potential financial risk here, so I appreciate the oversight. That's why we do this, so the council has a chance to delve into it and get some questions answered.

**Fritz:** I'd like to note just at this point on the budget, it's a fixed price contract. So any potential additional money would not be going to the vendor, which gives them a great incentive to get this done on time. It would be in terms of our staff time within Development Services having to be expended on this project for a longer period of time. So I think that's important for the public to understand that the vendor will not be getting more money as a result of the delays. And as you said, the turnover of 14 out of the 15 of staff has obviously contributed to that.

**Berry:** I might also add the bureau has been very diligent in working with this vendor. Paul Scarlett, the director of BDS, has been very on top of working with the vendor through his project team. Paul is here today for additional questions should the committee ask for that -- should the council ask for that. But it's still in the proof of the delivery of the vendor, which is really driving some of these scores.

**Neubauer:** Lastly, I would add that this is one of the first projects that was brought to the TOC because of its complexity. The bureau, the people that have been involved in this project were highly engaged with all of their vendors. They still have been highly engaged. These are usually very difficult projects to do because of all the different systems they have to interface with. I

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wouldn't say this is a surprising thing to us, probably not surprising to you, because this was one of the first projects we were engaged with.

**Hales:** Thank you. Alright, let's proceed.

**Neubauer:** The next project we have is the affordable housing software project from the Portland Housing Bureau. PHB contracted with Housing Development Services -- also known as HDS -- to implement a solution that will provide a single data repository for the city's affordable housing program. This effort will replace systems disparate systems with a modern and effective single core system, providing data entry efficiencies, reducing overall cost, and improving access to data and reports. The final loan servicing module went live in April. The TOC still has concerns about the lingering issues that remain that are preventing the bureau from signing off on acceptance. There have been some major accomplishments this quarter -- still continues to experience issues that need to be fixed by the vendor before the city agrees to a final sign-off and payment. None of these issues are preventing the system from running, but they are still items that need to be fixed. The issue list was -- the last issues list numbered in 23, April, and is down to 17 at the end of June. City has been prioritizing the remaining issues and discussing final acceptance and payment terms with the City Attorney's Office. The upcoming milestones for the next quarter. The project has hired online business systems to complete the 90-day post implementation report. Assuming that the final acceptance occurs soon, the 90-day report will be presented during the next quarter. Some of the concerns, risks the TOC has. The TOC stopped providing a colored dashboard ready for this project as it went live in April. The delays in the final acceptance are of concern, and the TOC recommends the project continue to check in with the TOC until the final acceptance and payment issues have been resolved.

**Berry:** Just a couple notes on this one. I did talk to the bureau director yesterday, along with a City Attorney's Office member. To date, the vendor has delivered four of five modules. The problem is the last module. This is the loan servicing module. One issue is they can't print out the loan packet that comes out of this system. That's a fairly major issue when you have a system. Although they can use the system online, they're still depending on the Midas system for backup, which is housed over at the PDC at this point. And of course, we need to get off that system by December of this year. To date, the remaining module price tag is about \$20,000 of which we have not paid the vendor because of noncompliance and non-delivery. But we also are in discussions about the ongoing maintenance expense, which is about \$45,000 that the vendor believes that we owe them. And so there are three things that came out of our meeting yesterday, and I'm just going to read these. The project is nearing completion with one module left to be delivered and tested. This is substantially behind schedule, however, the Portland Housing Bureau is following the contract and not paying for the last deliverable until acceptance testing is completed. Secondly, the final punch list of issues and items are being negotiated by the project manager level, and there are 17 outstanding issues as Ken has stated, five of which are considered critical. Number three, the bureau director is working closely with the City Attorney's Office to review contract and options for a non-negotiation strategy to ensure final delivery of the module as well as ongoing working relationship with the vendor. It's important that we keep this ongoing relationship with the vendor -- this is over a \$600,000 application we're talking about. The bureau director, based on city attorney's guidance, will deliver a communication proposing the project completion and final steps to HDS president this week. So we are in negotiation now. Given that we're not paying for the final module of \$20,000, we have not been paying the current maintenance of the four modules that are actually in operation of 45,000. We believe we can get some movement by paying for portions of the delivery of the 17 outstanding. And I think that will get us off of square one where we are with this vendor today.

**Hales:** Questions? OK, thank you.

**Neubauer:** The next project is the Office 365 project, led by the Bureau of Technology Services. This project is responsibility for migrating all city computers to Microsoft Office 365. The city currently uses Microsoft Office 2003, which Microsoft will no longer support after April of 2014.

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Migrating to the cloud-based Office 365 will save approximately \$1.2 million over five years, and provide more disaster recovery options and larger email storage. Some of the major accomplishments this quarter. The migration waves are continuing and the project is on track to have all the desk top migrations done by August 2014. All of the devices impacted by the April deadline from Microsoft are complete. As of June 2014, over 2700 computers out of 4300 have been successfully migrated. Email and PST migrations have begun, but they won't be completed until later in the fall of 2014. This will also be waved approaches. There continues to be lingering problems with the vendor. The testing process and communications with the Planet Tech vendor are not as good as they should have been, and staff are looking at other alternatives. Upcoming milestones. Migration waves will continue, with the majority if not all the migrations completed by next quarter. Some of the risk and concerns we have. Schedule is tight but manageable. Timeline to get the desk top migrations done by August 2014. On the budget and spend rates -- are looking good, and the scope continues to be stable. And I'm sure you all enjoyed that migration, from what I heard.

**Fritz:** I want to thank Mr. Berry's staff for working through some of the challenges with the migration. It took a little bit, but certainly you came back and came back and came back until you got it right. Thank you very much.

**Berry:** Yes. We'll share that with the team. Thank you, Commissioner. Just highlights on the Office 365 project. We did resolve the issues with the Planet Technologies vendor. That contract is done and finished at this point. We do now target not the end of August, but two weeks into September for all the remaining migrations for the city of the in-scope PCs. And then finally, we believe we will have about 500,000 left over from this project that we roll into phase two of the Office 365 project -- which is share point -- which has already begun. And those are my comments.

**Hales:** Great, thank you. Successful rollover. Thank you. Let's move on to the next one.

**Neubauer:** The next project is the city risk information solution connection, also known as RISC. This is a Bureau of Internal Business Services project. The existing risk management data system is out of compliance with city technology standards and is becoming difficult to support and maintain. This project replaces several existing independent systems with one integrated system that will support key business activities, increase effectiveness through integrated data management, increase effectiveness and automation, and implement best practices. This project was originally assessed in the winter of 2012 as not requiring TOC oversight. But due to increased risk and delays, the project joined the TOC portfolio in June of 2013. Current status for the TOC is that there's some concerns about the project timeline and the delays in the final piece of functionality. Despite 90% of the project going live in December of 2013, the remaining piece of medical review functionality continues to experience delays. The vendor is subcontracting the remaining work. This required a more detailed statement of work and negotiation of a revised work order which was completed in April of 2014. The project was in a holding pattern during the month of negotiation. QA recommended the project plan, risk management plan, and training plan be completed prior to this phase of the project. Upcoming milestones. The final configuration and implementation is tentatively planned for July-August of 2014. The revised project plan, including timeline and budget, should be included. Some of our risks around schedule -- because of a detailed and agreed-upon schedule, the plan for the remaining work does not exist. The schedule and scope are rated as red. The budget increased as a result of the work order and additional QA services. Overall, the original scope has not changed, but scope is red due to the lack of a detailed project plan for the remaining piece of this functionality.

**Berry:** Just some highlights that have just happened, actually -- breakthroughs on this project, the RISC project. As you look at the dashboard, TOC was rating the schedule red, budget yellow, and the scope was red. Although we did implement the last remaining medical bill review module last Wednesday. So they actually finished this project. And this morning, I got the past statement confirming the medical bill review test was a success. So we will turn this back over to TOC at the

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next meeting, but for all practical purposes, the project is done now. And that's the good news on the RISC project.

**Neubauer:** Good news. Alright, the next project is a procurement solicitation system from the Bureau of Internal Business Services. Procurement Services is outgrowing their current solicitation system, which doesn't offer a cost-effective solution or the functionality required by the city. Procurement is planning to replace and integrate three systems into one, and add functionality that will allow electronic request for proposal submissions. Current TOC status is a project is new and the TOC currently believes it's meeting our expectations. Some of the major accomplishments were that BuySpeed has been identified as the system that best meets the city's needs and will be purchased through an existing government cooperative agreement. The project is negotiating a statement of work schedule and final cost with the vendor. Procurement has completed the final -- has completed the internal business mapping process in preparation for the new system. The project is in the process of bringing QA on board. Some of the upcoming milestones next quarter are to finalize contract and schedule, system implementation, data migration and testing, and a go live with the new system is tentatively scheduled for December of 2014. Around concerns, the TOC will complete a dashboard for this project once the vendor begins work.

**Berry:** From a CTO perspective, I, too, agree that this project is currently meeting oversight expectations. And so we will continue to monitor it, we'll deliver a dashboard the next time you have us here.

**Hales:** Alright.

**Neubauer:** The next and last project is the lien accounting system rewrite from the Auditor's Office. The lien accounting system is used to record and manage assessments and liens for the city, as required by the City Charter and Oregon state law. This application is written in an old programming language as one of the two remaining applications on the main frame server, which is scheduled to be decommissioned July 1st, 2015. Because of the tight timeline and resource constraints, the decision was made to rewrite the existing system using a more modern programming language and transfer to a Windows environment. This is also a new TOC project and is currently meeting expectations. However, the committee is cautious because of their timeline. Some of their major accomplishments this quarter. Plans are underway to hire a programmer under an existing flexible service contract. The project is developing a project plan and planning to hire a project manager. The project is in the process of bringing on a QA vendor. Their upcoming milestones for next quarter. Project management team and vendor procured, begin code and system review. The TOC will complete a dashboard for this project once the project vendor work begins as well.

**Hales:** Great. Questions?

**Berry:** From a CTO perspective, the lien accounting system rewrite is meeting oversight requirements. I sit on the executive steering committee along with the customer, and today, we delivered the project charter, we defined roles and responsibilities, and we are looking at the project schedule and budget.

**Hales:** This is a pretty encouraging report overall. I appreciate that, and want to ask Paul in a moment to come up and respond just as well. But I understand the way this should work in my mind is the way that it is working, which is that you take a very cautious approach. That if there's a risk, you highlight it -- because we are trying to avoid those nightmare stories of IT projects gone wrong -- and you're doing a great job of assuring that these are being well-monitored and most of them are getting implemented pretty smoothly. So I understand there's always going to be a little bit of creative tension between this process and what a given bureau is doing in actually carrying on a project. So I'm OK with that, and I expect we'll hear a little bit of that in this presentation. But I guess overall, my reaction is you've got a good handle on all of these projects, the oversight process is working, the committee and the staff are working effectively as two sets of eyes on this process.

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So I just appreciate the work you're doing and the fact there's no ringing alarm bell here, just some concerns. Other questions or comments from the council for the team here?

**Saltzman:** I just want to thank the Technology Oversight Committee members for their great work -- Ben Berry and Kelly Ball for their great work. And great graphics. The presentation really helps the public follow along with what you're telling us, as well as helps us follow along. Keep those great graphics coming.

**Hales:** Thank you all. Maybe, Paul, if you just want to take a moment and come give us an update from your standpoint, in addition to what we've heard here from the committee and from Ben and Kelly. This is a much awaited and important piece of work, and I know you really focused on it.

**Paul Scarlett, Director, Bureau of Development Services:** We are. Thank you, Mayor. Good morning, Commissioners. Paul Scarlett, Director for Bureau of Development Services. Appreciate the opportunity to provide some more updates or perspectives. The ITAP project still does remain a very focused project for us. Each day, as I walk by the permit center, it really reinforces the need for an updated system when we have people lined up -- 150 plus per day -- to get to the permit center. As shared by the TOC and Ben Berry, the schedule and timeline is of concern. We are monitoring and diligently working with the vendors. We have gone to the extent of hiring or bringing on resource on our side to monitor, review the schedule in connection with the timeline, scope, and deliverables. I just got off the phone this morning with Sierra's side, and they've reached out to bring on resource focused just on the schedule to make sure the assumptions that were previously in place -- as well as the turnovers you heard about -- and make sure that folks that are being brought on actually have the experience and expertise. Part of the issue, we understand, is the integration. The project that we wanted to have to match our practice of colocation, have a streamlined permitting system has created some challenges. However, we are pretty pleased with some of the progress lately, and one of the more recent modules with transportation. It certainly was a concern with timeline, but our concern has been, can they deliver? Obviously, that is a huge concern. But we're assured by them that, yes, they can do this work. And we will have a system that meets the initial objectives of the project, which is to be able to have a system for allowing electronic plan and review submittal without having to come to our doors, and also the mobile devices and so forth. So we are assured by recent deliverables and accomplishments that that can happen. Rebecca Sponsel to my left is the project manager that was brought on board specifically to manage the ITAP project. She, along with her staff, are doing a great job. Richard Appleyard to her left is managing our current system, the track system. So there's also that discussion to when we would phase out. But Rebecca's team and Richard's team works closely. Overall, I have concern about the schedule, but I'm very -- I think I'm more relieved with some of the latest commitment and communication and the different progress. We did go around and brief each commissioner, because we wanted to get in front of them directly to let you guys know how concerned and how big of a priority this project is. Certainly, we're not out of the dark, but things are looking better. And we have a couple of months committed -- I know Ben said maybe the end of the year. We're looking at two months to have the schedule more tightly aligned. I will turn it over to Rebecca who's in some of the more direct communication on a daily basis to provide additional information -- unless you have questions. Thank you.

**Hales:** Thank you.

**Rebecca Sponsel, Bureau of Development Services:** Good morning. The project has had some successes, but some very significant challenges due to the complexity, as you've already heard this morning. The success we've had recently is achieving the integration between the two primary software modules. That has just happened in the last week. It is re-creatable in successive development sessions that we're going to have. Also, I want to call out that the problems that we're discovering -- this is the time of the project when that normally happens. We are in the phase two requirements gathering part of the project. This is when everything gets aired out and has to be worked out before it can go off and be configured. And as we've taken a slightly different approach

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to build in modules -- instead of the waterfall method the vendor originally had recommended, we are seeing these problems immediately. And we're able to address them immediately. All the discoveries get to apply to the future work in a way that is causing us to accelerate. We have been very diligent in getting the vendor to apply a higher level of scrutiny around estimating the work. That is evidenced in the transportation's division recent workshops -- 14 in total -- that have gone according to schedule, according to plan, and have produced good results. So we are more cautiously optimistic in the vendor being able to complete the work according to the new revised schedule that is being built right now. Also, I want to call it out that we have put a halt on new development in place until all of the catch-up work is done. And we will not cross that line. And it needs to be a sufficient quality that we can support, not just through the development phases, but we have to be able to support this work when we go live and afterwards. So it's not just about doing the work right now. This system has to be supportable by the city later on.

**Hales:** Good, thank you. Appreciate that.

**Scarlett:** If I could add real quick -- sorry. We have Cliff Smith, who is our quality assurance and consultant that's worked with us closely and has been very frank, and share the same concerns as us. So I do want to thank him and his companies -- back here -- his work that he's been doing for the bureau has been great.

**Hales:** Great. Questions for this team? Anything else you want to add? Appreciate that update. Again, we're just trying to make sure that everybody has got eyes open and you especially are obviously paying close attention to this phase where these problems are becoming clear and are getting addressed. So that's pretty reassuring to hear that that's a consequence of the approach that we're taking, rather than some sort of impending train wreck, frankly. So, that's helpful for me to hear that at least. Thank you.

**Scarlett:** You're welcome. Thank you.

**Hales:** Other questions or concerns? Thank you all very much. Is anyone signed up to speak on this item?

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

**Hales:** Then we'll need a motion to adopt the report.

**Saltzman:** So moved.

**Fritz:** Second.

**Hales:** Further discussion? Roll call.

**Item 912 Roll.**

**Saltzman:** Again, good work to the Technology Oversight Committee, and thank you for some of the explanations we received today. It's very helpful. The role of this committee remains to scrutinize projects throughout the city and quarterly report to the city council so we can all share in the pain or the gain of implementing software projects. So, thank you very much. Pleased to vote aye.

**Novick:** Thanks to Ben and to Kelly and the committee. Really appreciate the report, and really appreciate this process. I suspect one of us must have said this the last time you reported -- the last few times -- but certain developments in the healthcare field of state and federal level recently has made I think the existence of this process and this committee, particularly -- has made its value particularly evident. So, thank you very much for being part of it. Aye.

**Fritz:** Yes, a great thanks to Commissioner Saltzman for establishing this committee and also for setting it up with a delegate from each council office. I want to thank Doretta Schrock, my representative since its inception who has retired. I have an opening, so if anyone is interested and has the technical expertise, please call my office at 823-3008. So we'll get reinforcements, because it's a lot of work, and I really appreciate the work of the volunteers on the committee in addition to the professional quality assurance we have. So we have a bureau team, outside quality assurance, and then this citizen volunteers -- that's three levels of oversight which brings up these challenges -- and as Rebecca Sponsel said -- brings them to light at the time that they most need to be fixed. It

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has been interesting to hear that one of the reasons that the vendor is finding this City of Portland system challenging is because we did the colocation project. That normally things go through bureaus in other cities, it's more of a step-by-step process, whereas ours -- which is another improvement we made in my first term to collocate all of our different bureaus back so that the applicant gets one answer at one time and can move forward expeditiously with their project. It turns out that's difficult for a computer system to figure out how to do that. So, I still think it's the right thing to do, and I'm very appreciative to our bureau staff for working so diligently on this and it will be on time, on budget, and it will work. And I'm very confident of that. Thank you. Aye.

**Hales:** Thanks to the good work of our staff, Ben and Kelly; our volunteers, Ken and others; and the bureaus. There's been less pain and more gain than we might have otherwise experienced in these big, expensive, perilous IT projects. I appreciate this good report and the progress that we're making. Thank you all. Aye. I neglected to mention earlier -- I hope there is no one here waiting for the North Vancouver and Cook LID item, because that is on the afternoon agenda. I guess that was changed. So, my apologies for not mentioning that earlier. If you're waiting -- I hope you're not -- but it is on the 2:00 p.m. agenda. OK, let's move to regular calendar, please.

**Item 926.**

**Hales:** Chief Procurement Officer is here. Good morning.

**Christine Moody, Office of Management and Finance:** Good morning, Mayor, Commissioners. Christine Moody, procurement services. You have before you a procurement report recommending a contract award to Moore Excavation Inc. for the Sellwood-Moreland Sewer Rehabilitation Project. Engineer's estimate on this project was \$7.5 million. On July 24th, 2014, four bids were received, and Moore Excavation is the low bidder at \$8,902,765. The city identified seven divisions of work for potential minority, women, and emerging small business sub-contracting opportunities. Subcontracting participation on this project is at 11.7%, and they are responsive to the city's good faith effort requirements. I will turn this back over to council if you have any questions regarding the bidding process, and there are representatives from BES and Moore here to answer any technical questions you might have.

**Hales:** So the fact that the best bid was 20% over our estimate is illustrating the problem we've been talking about -- the robust construction market making it less cost-competitive for us. Is that what's going on here?

**Moody:** Yes, Mayor. We are seeing that in a lot of construction bids, especially over the summer construction season where lots of contractors are busy. And so, that is kind of what's been happening over the last few months.

**Hales:** Understood. Questions for Christine?

**Fritz:** I have a question about the good faith effort on women and minority small businesses. It says that the divisions of work identified included traffic control services and that Moore Excavation indicates their intent to self-perform that division. I know that in other contracts, that's a place where there are significant number of women and minority-owned businesses. And I'm wondering - - 11.7% doesn't sound like a very high percentage of the subcontracting work going to these targeted businesses. Is there anything we can do about that?

**Moody:** I will ask Gary Stephens to come up here and talk about that. He's from Moore.

**Hales:** Good morning.

**Gary Stephens:** Good morning, Mayor, Commissioners. Commissioner Fritz, we put partial under private control. So, we're going to share that responsibility with a minority subcontractor. We'll have some of our forces and the minority contract both perform traffic control.

**Fritz:** And is there a reason that you can't allow all of the traffic control to be subcontracted out?

**Stephens:** Well, we run into the challenge where it's a catch-22 where we try to keep our people employed. It's either laying our people off or hire subcontractors. That's the challenge. And that's where we put partial -- our intent is to grow that percentage, but we always put a partial not knowing -- we're confident that that percentage is going to grow. Let me say it that way. We put it

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partial because that allows us to have our employees also participate when otherwise they would be sent home and be out of work.

**Fritz:** Right. You know, I've been on the council for over five and a half years and we have done a lot of business with your company. We certainly appreciate you being the low bidder. I'm concerned about the level of minority participation.

**Stephens:** OK, can I answer that? As Christine said, we have good faith effort that we have to go through. We sent out 31 solicitations in four different categories -- asphalt, concrete cutting, hauling and trucking, and traffic control. Of those 31 solicitations, we had 22 that either stated they're not bidding, or didn't receive any response at all. And that's after not only sending it out in writing -- the request in writing -- but also doing individual phone calls to each company. So, we had over 70% reject our solicitation. Of the nine quotes that we received in three categories -- concrete cutting, we only received one, we're using them. Hauling and trucking, we received three, and we're using two out of the three. And traffic control, we received four and we're using one out of four, with us doing partial. So, out of the nine, we're using 45% of the companies that responded. And again, I want to emphasize, our intent is to have that number grow, but again, we have to protect -- at least I feel, being the operations manager -- we have to also protect our employees as far as their employment.

**Fritz:** Thank you.

**Hales:** Great, thank you, appreciate that. Are there any other questions? Anyone else that wants to speak on this item?

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

**Hales:** Roll call on acceptance of the report, please -- or the bid.

**Fritz:** Move to accept the report.

**Hales:** Do we have to do that, Karla?

**Moore-Love:** We usually do, yes.

**Hales:** Sorry, Amanda. Motion made. Second, please?

**Saltzman:** Second.

**Hales:** OK, then a roll call on accepting the report.

#### **Item 926 Roll.**

**Saltzman:** Congratulations to the Moore company. This is a big contract, and I very much appreciate you being here and providing us some insights into your efforts to increase your minority, women, and emerging small business subcontracting opportunities and to walk us through your process and give us great answers to the questions that Commissioner Fritz was asking. Aye.

**Novick:** As a former long-time Sellwood-Moreland resident, I'm happy that the sewers are being rehabilitated. Aye.

**Fritz:** Thank you for being here and for answering my questions. Aye.

**Hales:** Appreciate the good explanation. Thank you. Good work. Aye. OK, one more procurement report, please.

#### **Item 927.**

**Hales:** Christine.

**Christine Moody, Office of Management and Finance:** Christine Moody, procurement services. You have before you a procurement report recommending a contract award to PCR, Inc. The engineer's estimate on this project was \$685,000. On July 29th, 2014, two bids were received, and PCR Inc. is the low bidder at \$736,837. The city identified seven divisions of work for potential minority, women, and emerging small business subcontracting opportunities. Subcontracting participation from PCR at the time of bid was 0%. PCR is committed to working with the city to increase MWESB participation, and has submitted a plan outlining additional good faith efforts to increase utilization on this project, and subsequently are at 10.1% in MWESB subcontracting. I will turn this back over to council if there's any questions about the bidding process.

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**Fritz:** I very much appreciate -- I've seen this over and over again where you've pushed back on winning applicants and helped them find ways to increase the MWESB contracting out. So thank you for doing that. I just have a question about the contract itself. It's about an improvement in the Bull Run watershed, and it says the road doesn't meet the design criteria of the transportation system plan. Whose transportation system are we talking about here?

**Scott Bryan, Water Bureau.** I'm Scott Bryan with the Water Bureau, and the design engineer for the project. We developed a transportation system maintenance plan for the Bull Run roads when we accepted maintenance responsibilities for them from the forest service several years back. Part of that was a goal set for the first several miles of this road, which is where we send our employees daily to work to bring it to what would be a typical county road standard, 11-foot lanes. Significant portions of this five miles of road don't meet that. It varies. And so, this is a -- primarily what I'm referring to in trying to get this entire section to you as much as possible meet that criteria.

**Fritz:** So it's our own internal plan, it's not being required by any other identity?

**Bryan:** Correct.

**Fritz:** Thank you.

**Hales:** Thanks. Other questions? No one to speak? Then motion to adopt the report.

**Saltzman:** Move to accept the procurement report.

**Fritz:** Second.

**Hales:** Roll call, please.

**Item 927 Roll.**

**Saltzman:** Good work, procurement services, for increasing the minority, women, ESB percentage. And great project. Aye.

**Novick:** Aye.

**Fritz:** Thank you for being here to the answer to the question. Aye.

**Hales:** Thanks, appreciate you keeping the pressure on. Aye. Then we have four second reading items, please, starting with 928.

**Item 928.**

**Hales:** Roll call, please.

**Item 928 Roll.**

**Saltzman:** Aye. **Novick:** Aye. **Fritz:** Aye. **Hales:** Aye.

**Item 929.**

**Hales:** Roll call.

**Saltzman:** Aye.

**Novick:** In light of Commissioner Fritz's firm confirmation of the fact that the versions are, in fact, outdated, I vote aye.

**Fritz:** [laughs] Thanks to my chief of staff Tom Bizeau for going through every page and every line. Aye.

**Hales:** Here in Portland, zoo might be applied to some other flora, but not to the actual zoo anymore. Aye.

**Item 930.**

**Hales:** Roll call.

**Item 930 Roll.**

**Saltzman:** Aye. **Novick:** Aye. **Fritz:** Aye. **Hales:** Aye.

**Item 931.**

**Hales:** Roll call.

**Item 931 Roll.**

**Saltzman:** Aye. **Novick:** Aye. **Fritz:** Aye. **Hales:** Aye.

**Hales:** And we are recessed until 2:00 p.m.

At 11:22 a.m., Council recessed.

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

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

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

**SEPTEMBER 3, 2014      2:00 PM**

**Saltzman:** Council afternoon session will come to order. Karla, please call the roll.

**Saltzman:** Here. **Novick:** Here. **Fritz:** Here.

**Saltzman:** We're going to continue on our regular agenda.

**Item 932.**

**Item 933.**

**Item 934.**

**Saltzman:** Captain Kruger.

**Mark Kruger, Bureau of Police:** Sir, Mark Kruger, captain of the drugs and vice division. The first grant -- \$170,000 for the HIDTA interdiction team at the drugs and vice division. The HIDTA interdiction team consists of four officers and one sergeant in the drugs and vice division, plus eight state and federal agents who are specifically assigned to engage in drug interdiction activities for illegal narcotics flowing into the state of Oregon and be transited out of the state of Oregon on our interstate systems, our bus lines, on our commercial air traffic, through the post office, through FedEx, through UPS. That's specifically what they spend their time doing. And they spend their time identifying packages in UPS, USPS. They act on intelligence information that is shared with us by other federal and state and local law enforcement agencies around the country. They locate these packages of drugs and conduct follow-up investigations from locating those packages, from locating that money, and engage in additional drug investigations into drug trafficking organizations that operate in the Portland and northwestern area, and also money laundering investigations based on those discoveries. We have been involved in this particular grant since 2004, and our current iteration again what is we call the HIDTA interdiction team at the drugs and vice division. The specific use of the dollars are of the \$170,000 grant, \$80,000 is expended for investigated overtime for the Portland police officers that are involved with the task force. An additional \$50,000 are expended as overtime for our Oregon state police partners involved in the task force. About 12,600 is expended for parking for all the various associated vehicles assigned to the task force. Another \$6000 for investigative databases. And then we have \$20,000 for the lease of vehicles necessary to transport those assigned to those assigned to the task force.

**Saltzman:** Does that cover all three items?

**Kruger:** That's just the first one of \$170,000, sir.

**Mike Krantz, Bureau of Police:** Lieutenant Mike Krantz. The second grant for \$36,000 from the Department of Justice HIDTA task force is specifically for the Metro Gang Task Force for the use and purchase of evidence and information. The Metro Gang Task Force is a combination of Beaverton police, Tigard police, Portland police, ATF, FBI that work together to combat violence -- criminal gang investigations. And the \$36,000 specifically is used for the combination of those officers to utilize in investigations that involve narcotics and gang activity. And that is specific for purchase of evidence and information only.

**Kruger:** And the final one is the marijuana eradication grant. This is a grant that is administered through the national office of drug control policy and assigned to the Oregon Department of Justice and administered out to the agencies that engage in this identity of. First, let me speak to why we receive these funds -- and we've received these funds for the last 18 years. As the experiments around the country with marijuana have gone on, the federal government through the U.S. Attorney

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General has made it quite clear that continued federal forbearance around the experiments in marijuana are largely contingent upon how effective state and local management of those programs are, and the enforcement of violations of those programs. To this end, this money is extended to state and local law enforcement to provide enforcement and management around legalized marijuana. The drugs and vice division follows the U.S. Attorney General's specific guidance through their smart on crime initiative, and we work on the top three priorities that the U.S. Attorney General has for marijuana. And that is to conduct enforcement that attempts to keep marijuana out of the hands of minors; to conduct enforcement that attempts to prevent money laundering that allows illegally funds from marijuana to go to criminal gangs and cartels; and finally, we conduct enforcement to attempt to prevent marijuana from being shipped from states where it is legal in some form to states where it is not legal. To that end, the drugs and vice division conducts its enforcement around those three areas. We receive approximately 300 citizen complaints in the drugs and vice division annually related to illegal marijuana grow operations. That accounts for approximately 25% of our total illegal drug complaints that we receive. So we take those complaints in, triage the complaints for the most serious violators. And once we identify those violators, we conduct investigations on those particular cases. And most often, we find industrial-sized marijuana operations where their focus is to ship the marijuana out of the state of Oregon, complying specifically with the Attorney General's concerns. We regularly conduct financial investigations in the drugs and vice division where we review suspicious financial transactions that occur in the city of Portland for evidence of drug trafficking. When we identify evidence of drug trafficking, we conduct investigations around that to determine if there is indeed drug trafficking and then to break up that drug trafficking. And finally, we conduct extensive interdiction operations -- again, with our other HIDTA grant, with the HIDTA interdiction team, we spend a great deal of time working the buses, working the trains, working UPS, U.S. Postal Service, and other shipping operations to interdict packages that are flowing into and out of Oregon. We are routinely interdicting packages of drugs that come into the city of Portland, and we also interdict large packages of cash that are flowing into the state of Oregon for marijuana that's being shipped out of the state of Oregon. So we believe that by focusing on the Attorney General's enforcement priorities around the responsible management of marijuana in states where it is legal in some form, that we are doing the best to provide the federal government with evidence that it is being responsibly and credibly managed in the state of Oregon and the city of Portland.

**Novick:** Captain, you would anticipate that even if marijuana was legalized in Oregon, you would continue to do this work for the reasons you stated?

**Kruger:** That's correct. In every state where marijuana -- well, Washington and Colorado, where marijuana has been legalized -- and in the states where medical marijuana is legalized, it remains illegal to ship marijuana out of those states. In order to -- again, we believe that it's important that we do the best to honor the concerns of the federal government by attempting to prevent as much as possible from being shipped to states where it's not legal. So we would continue to engage in this enforcement. This particular grant expires on December 31st of this year. However, we'll continue operations year-round as we identify targets that come to our attention.

**Novick:** Jumping back to 932 for a moment, how do you measure the success of the drug interdiction task force?

**Kruger:** Well, for us, I can say we seize large quantities of drugs coming into the city of Portland. And so we use that as a measurement of success. We also measure our success by the fact that we seize upwards of a million dollars in cash every year that is being illegally transferred in money laundering operations in the purchase of illegal drugs. So, that's not an insignificant metric for determining if our enforcement efforts are having some effect on illegal drug trafficking through Portland.

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**Novick:** So is a good year one in which you seize a larger total number of drugs and cash? Do you have any way to measure the percentage of total drugs and cash in the region you're seizing in any given year?

**Kruger:** It's not possible for us to determine the total volume of drugs and cash passing through the area. But from year to year, we have -- in fact, I can say -- I don't have the figures on the top of my head -- but I can say in the last 10 years, every year, we've seized a higher volume of cash coming in and out of the state and a higher volume of drugs coming in and out of the state.

**Novick:** Is that a good thing or a bad thing?

**Kruger:** I think that's a positive thing, because it interferes with and disrupts the criminal drug trafficking organizations that are involved in moving drugs in and out of the state.

**Novick:** But is it possible that the fact that you're seizing more from year to year just means there's more rattling around?

**Kruger:** No, I'd say it has more to do with the fact of the way drug trafficking has changed within the last 10 years. With the outlawing of pseudoephedrine in the state of Oregon back in 2004, the local manufacture, the national manufacture of methamphetamine -- this is one example -- has gone down steadily. As a result of that, the Mexican cartels have moved production of methamphetamines south of the border, so they're able to manufacture extremely large volumes of methamphetamine in super labs outside the United States, and then try to transport that in. Our borders are porous, there's no doubt about that, and it's easy to get it across. So the fact that we continue to seize larger amounts of narcotics indicates to me that it is because larger amounts are being manufactured. We're still being successful in interdicting portions of that. And I think that that's a positive thing to manage to keep as much of that out of public circulation and the public as possible.

**Novick:** Do you try to correlate the efforts of team with the amount of total drug use of the city?

**Kruger:** No. It's a factor in the threat assessment that we rely on every year, but our focus is on mechanically interrupting the drug trafficking organizations as much as possible.

**Novick:** One last embarrassing question -- I should know the answer to this -- but did council have to approve the application to DOJ last year for these funds?

**Kruger:** Yes. Every year that we have the HIDTA grant annually and the marijuana eradication grant, Council has approved.

**Fish:** I apologize for being late, and you may have already answered this question. In the event that Oregonians vote to legalize uses of certain amounts of marijuana this November -- and I understand the supremacy clause, so we'd still be in a potential conflict with the feds over that. To what extent would that impact the grant under 934, either the administration of the grant or our compliance with the terms of the grant?

**Kruger:** First of all, we'd have to determine if we would apply for the grant next year. That would be the first question that we would ask. And are you referring to HIDTA or the marijuana eradication?

**Fish:** 934 is the marijuana eradication.

**Kruger:** First of all, we would have to decide -- based on whatever happens in November, we would have to decide if we were going to apply for the grant. And secondly, the application of those moneys, again, fits clearly into the larger federal concern of those drugs being shipped out of the state. And it also fits into the desire for the federal government to see that states and local entities are effectively managing that drug, the legalization of that drug in their jurisdictions. I think it's incumbent upon law enforcement at some level to have a credible enforcement presence around it. So I think it would still be valuable given that there other states in the union that do not wish to see Oregon marijuana arrive in their post offices and in their communities. So I think it would be potentially important to continue that.

**Fish:** I guess a related point is -- there's been a lot of commentary about what would be what would be the impact of legalization on driving, and to what extent does use of marijuana result in

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impairment, and therefore result in a safety concern for the public. What is the current state of your understanding of how to detect whether someone is driving while impaired? And how -- assuming voters pass measure whatever it is this November, what will you have to do to adapt to that to ensure that people are not driving while impairment?

**Kruger:** Well, as it happens, a large portion of my career has been in the traffic division, so I've arrested hundreds and hundreds of impaired drivers every year. Besides alcohol, the substance that is most associated with impaired drivers in the state Oregon based on our investigations is marijuana. It presents something of a difficulty for law enforcement, because there is no immediate and obvious test for marijuana impairment as there is with alcohol.

**Fish:** Unless you're in the middle of a Cheech and Chong movie. I mean, that's the only time when it's apparently obvious because it's like billowing smoke coming out of the window.

**Kruger:** Presently, law enforcement program in Oregon has a program -- and nationally -- called the drug recognition expert program. Those are specially-trained officers who work in traffic units that conduct specific scientifically-based tests to determine what the likelihood is the person is under the influence of X, Y or Z drug. That is currently the best method that we have to detect them. It is going to be more difficult when people are more readily using marijuana in the state of Oregon to specifically detect people who are under the influence. That is a real problem for law enforcement, it is a real problem for public safety on our highways.

**Fish:** And we currently have -- in my opinion -- a problem with impaired drivers because of alcohol. I know that every time I take the Banfield home late at night -- and my unscientific sampling of some of the cars around me is that's a problem. We know we have a problem with impaired drivers caused by texting and using cell phones. Commissioner Saltzman has a pet peeve about people thinking they get a pass when they are stopped at light. And frankly, we could start issuing citations along Sandy, Broadway, and MLK -- everybody at the light has their head down looking and texting and doing things they are not allowed to do. So we've got alcohol, we've got cell phones and texting and now we're going to have marijuana, presumably, if the Oregonian has its way. Are we at risk of creating an untenable situation on our roads if we can't get a handle on these three problems?

**Kruger:** Sir, I don't think I'd be that alarmist. I think that we will face a higher volume of impaired drivers on the roads based on the free use of marijuana if it is legalized in Oregon. I think that that is going to be an issue. I'm not going sit here and suggest we are going to have catastrophic numbers of impaired drivers on the roads. I think what we do need to do -- and what science needs to help us do -- is to identify reliable and more effective ways of easily detecting someone to provide enough proof for a criminal charge for an officer in the field conducting tests. And I think that's an area where we are woefully unprepared for the legalization of marijuana.

**Fish:** One other question. I know the legislature has enhanced the penalties for texting while driving. But it doesn't seem to have much impact on people who drive in my neighborhood. Are we going to need to use even tougher love at some point to get across the message that you're not allowed to drive and text at the same time?

**Kruger:** Well, sir -- again, based on my experience working in traffic -- one of the best things that is successful in reducing the incidence of violations in any given area is the frequency of the enforcement that occurs. And given our staffing situation at present, we have a difficulty in managing a very robust enforcement around impaired DUI driving, around texting and driving. Again, if there was a stronger effort in place to provide a more vigorous, robust, and visual enforcement presence around those areas, I think you'd see a difference. The example I give is this. We have photo radar in the city of Portland. We conduct what we used to call wolf packs in the area on highways where there was a lot of speeding going on. When you see a lot of red and blue lights out there, when you see that photo radar light flash, we get compliance on lowering speeds. We get compliance on people violating the speed limit laws. And if we have a more robust DUI enforcement program -- and in the event of marijuana, around impaired driving through marijuana -

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- you see results. And I think that that in conjunction with public awareness campaigns and funding and additional emphasis on drug treatment I think are some of the best ways that we can possibly attempt to minimize the impacts from what could potentially come.

**Fritz:** Just taking a picture at every red light to see how many drivers have their heads down texting. I was going to comment on the marijuana grant that even if marijuana is legalized, we would still want to stop the activities that you mentioned, the underage use and the money laundering and the drug trafficking. Seems to me that those are very good initiatives that you've been doing a long time and I would appreciate ongoing attention to those.

**Kruger:** And I'd just like to say, Commissioner, we believe in the drugs and vice division of responsibly enforcing the drug laws based on the reality in the state of Oregon. When we come across what I call industrial-sized organizations involved in manufacturing marijuana, that marijuana invariably winds up in the hands of minor at some level. It invariably involves money laundering, and it invariably involves the shipment of marijuana to states where it's not legal. I think that by focusing on those three areas, we are doing the most we can to be responsible to the laws in Oregon, yet also responsible to the larger national picture and concerns.

**Fritz:** I agree, thank you.

**Saltzman:** Refresh my memory. What happens to the million dollars in cash that we seize?

**Kruger:** Those funds -- once the cases are adjudicated, then there's a sharing process between the agencies that are involved. Most of the funds we seize we seize through the adoption of a federal agency such as HSI or DEA. They have a percentage -- they take a certain percentage for the federal government and the remainder goes to the city of Portland. Typically, we receive anywhere from 60% to 80% of the funds that we seize. Those funds are available for law enforcement purposes such as training, special equipment needs, and things of that like that do not supplant existing budgets in the agencies that are involved.

**Saltzman:** So there are designated uses for this seized money?

**Kruger:** Yes, sir.

**Saltzman:** It can't just be used for --

**Kruger:** It's specifically reserved for law enforcement purposes.

**Saltzman:** Right. But I mean within that, is there a subset of more narrow law enforcement purposes that that money can be used for -- as opposed to paying operational budget of the police bureau?

**Kruger:** We can't use to it pay operational budget. It's only for specific items and things that are extra to our given budget. Again, we can't supplant our budget with those funds. The funds are most usually spent on providing training for officers, special purchases of equipment that we do not have budgeted funds for, and usually one-time-type purchases for very special equipment, like, say a computer server to run the photo radar program. Things of that nature.

**Saltzman:** Any other questions? Well, thank you. Do we have anybody that wishes to testify on 932, 933, or 934?

**Moore-Love:** We do have one person signed up, Charles Johnson.

**Saltzman:** OK. Welcome. Just give us your name and you have three minutes.

**Charles Johnson:** Good morning, Commissioners. I won't need three minutes. I'm Charles Johnson. I want to thank you for your thoughtful questions. Certainly, any federal money that could come back to the city of Portland to help us with our large -- some would say oversized -- police budget is a good thing. But I hope the next time this comes around, your questions will also focus to the broader federal budget related to drugs -- and not so much enforcement -- but we know and the police know there are plenty of people affected by methamphetamine and other drugs, and they're not able to get the treatment they need. So I hope your legislative liaison people will keep up the pressure to consider whether Portland needs to strongly advocate for the feds to keep shifting more money away from co-sponsoring police actions and more into having places for our local methamphetamine and heroin addicts to stop their drug usage and improve their lives. Thank you.

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**Saltzman:** Thank you. No further testimony, please call the roll. These are all three emergency ordinances. So if you could please call the roll on 932.

**Item 932 Roll.**

**Novick:** I have the hardest time with this one, because it's not encouraging when I ask how you measure the success of this program and the answer is we measure success by how much drugs and how much money do we seize, and it's not connected to drug use, which supposedly should be the point of drug interdiction efforts. So I would seriously -- despite the fact that this is free money coming, in as Mr. Johnson suggested in effect, I would seriously consider voting no except for two facts. One is that I take Captain Kruger's word that Council must have voted to approve the application for this grant, and I presumably have voted for that. So, it would be kind of unfair to say we can't accept it. Of course, this is an emergency ordinance -- although I wish that it had been brought earlier so we wouldn't be in this position. Apparently, if I voted no, that would mean that we didn't get the money. But the mayor said I think a few months ago that he'd like to you have a searching conversation about our role in the war on drugs. And I hope that we engage the state and the federal government in that, so that perhaps are in the position of applying for funds for treatment or other services, as opposed to pursuing drug dealers because they're drug dealers. So with that caveat, I vote aye.

**Fritz:** Commissioner, you could vote no and we could take the emergency off, we just wouldn't get the money as fast.

**Novick:** It's my understanding that it would jeopardize getting the money at all. That's what I was told that in a briefing by the Mayor's Office.

**Fritz:** Alright. Well, I do support these activities that this grant is for. Regardless of your position on whether drugs should be legal or not, they shouldn't be in the hands of minors, they shouldn't be used to create profit any more than drug companies should be using medications to create enormous profits. People need them and should be able to get them at reasonable prices. So I appreciate that work is being done on this. Aye.

**Fish:** Aye.

**Saltzman:** Aye. 932 is adopted.

**Item 933 Roll.**

**Novick:** I have less of a problem with this because the bureau says that this is for drug enforcement activities associated with violent gangs. And I think I said in their discussion of the drug and vice division's budget a couple of months ago that the extent that you're going after people for drugs when really you're concerned about the violence they are causing -- I can see an argument for that. So given that, I much less reluctantly vote aye.

**Fritz:** Aye.

**Fish:** Aye.

**Saltzman:** Aye. 933 is approved.

**Item 934 Roll.**

**Novick:** Based on the bureau's presentation and explanation that even if marijuana is legalized, in order to secure the forbearance of the federal government, these are the kinds of activities we still have to be engaged in, I vote aye.

**Fritz:** Aye.

**Fish:** Aye.

**Saltzman:** Aye. 934 is approved.

**Item 935.**

**Saltzman:** This ordinance authorizes us to provide a \$100,000 grant to David Douglas School District for the Earl Boyles Early Works program. I think all of you have been out there and seen the tremendous progress being made, this Earl Boyles early childhood education wing as well as the family support center is going to open on September 18th. And these funds were approved by City

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Council in this year's budget, so thanks to all of you your support. Happy to answer any questions. OK, is there anybody that wishes to testify on 935?

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

**Saltzman:** OK, then it's an emergency ordinance. Please --

**Novick:** Actually, Mr. President, is this an item that Amy Trieu worked on?

**Saltzman:** It is.

**Novick:** Is Amy here?

**Saltzman:** There she is, she's hiding behind the pillars.

**Novick:** Commissioner, if I may, I would like to question Ms. Trieu about what exactly the money is going to.

**Novick:** Let's bring Ms. Trieu up here to answer those questions.

**Fish:** Swear in the witness, please. [laughter]

**Saltzman:** Have a seat, Ms. Trieu.

**Amy Trieu, Office of Commissioner Dan Saltzman:** Hello, Amy Trieu, Dan Saltzman's office.

**Novick:** Ms. Trieu, \$100,000 is a lot of money. What exactly is it going to be spent on?

**Trieu:** This will be toward the capital costs of the early learning center at Earl Boyles Elementary. There's going to be a family support space and also specialized classrooms for early learning.

**Novick:** And this early learning stuff -- is there any research suggesting it does any good?

**Trieu:** There actually is quite a lot of research done on the importance of early childhood education. Ages zero to five is really a critical time for children to grasp literacy skills, speaking skills, listening skills.

**Fish:** Commissioner, I'd also like to observe that once upon a time, there was an alternative funding mechanism that was considered by this council, which was not as straightforward as a grant in this nature. And it produced a lawsuit that froze everything that happened in urban renewal, put the Bud Clark Commons back two years, and produced a set of legislative changes which continue to shape how we do urban renewal. So as someone who watched that fight erupt and the clouds that it continues to have over urban renewal, and now contemplates the fact that for the second year in a row the council has been able to -- with Dan's leadership and Amy's support -- make grant to this worthy program that did not produce a political firestorm, I must say for the record that I'm relieved.

**Novick:** Finally, Ms. Trieu, is it true that this is your last day in city employment?

**Trieu:** It is indeed.

**Novick:** And is it true that you're going to work for the SUN program?

**Trieu:** That is true.

**Novick:** May I ask you a favor?

**Trieu:** Yes, anything.

**Novick:** Could you strive to achieve Pauline Anderson's dream of getting people to stop saying SUN schools? Because after all, the S in SUN stands for Schools, and we're really saying Schools Uniting Neighborhoods schools.

**Trieu:** That's going to be quite a battle, but one I'm happy to try to make some effort on for you.

**Novick:** Thank you very much. And will you accept this parting gift?

**Trieu:** Oh, thank you. [applause]

**Saltzman:** Amy, just have a seat. This is your life now. [laughter] Who's next? Who's in the wings?

**Fritz:** We've got half an hour before the next time certain.

**Saltzman:** I just wanted to say that Amy has worked for me for seven and a half years, and it's been a pleasure. She's handled many, many bureau assignment from the Bureau of Environmental Services to the Office for Community Technology to the Children's Levy to --

**Trieu:** OSD.

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**Saltzman:** The sustainable development office. You've been great working for us, we're really going miss you. She's moving on to become the SUN school coordinator for David Douglas High School, which is where she graduated from herself. So she's returning to her roots, in essence. We know you'll continue to do great work as you've done for me and as you've done for the citizens of Portland. We know you'll do great work for the residents of David Douglas School District. So, thank you.

**Novick:** Mr. President, could we suspend the rules for applause?

**Saltzman:** Yes. [applause] Any parting comments, parting shots?

**Trieu:** You know -- I said this in our staff meeting the other day -- I don't feel like I'm actually leaving the city, I feel like I'm just being posted out to David Douglas. Because it feels like such a continuation of what we do already. And I feel like I'm just extending my public service and the intent of this city. So I feel like I'm just going to be on the other side of town, but still doing the same work here for us.

**Saltzman:** Great. We'll be sure to come out and visit you.

**Trieu:** Yes, the groundbreaking is September 18th for Earl Boyles, so, come out.

**Saltzman:** We'll be there.

**Fish:** Congratulations.

**Trieu:** Thank you very much.

**Fritz:** Thank you, Amy.

**Saltzman:** Did we call the roll? We haven't done the vote.

**Fritz:** Minor detail.

**Item 935 Roll.**

**Novick:** Aye.

**Fritz:** Thank you, Amy, for all of your good work; and Commissioner Saltzman, for your leadership on this project. Aye.

**Fish:** Aye.

**Saltzman:** Aye. OK, the \$100,000 for Earl Boyles Early Works is approved.

**Item 936.**

**Saltzman:** Mr. Aebi, would you like to walk us through this?

**Andrew Aebi, Bureau of Transportation:** Good afternoon, Commissioner Saltzman. Karla, do we want to go ahead and read 937 and 938 and dispense with those as well?

**Item 937.**

**Item 938.**

**Novick:** Andrew, I won't bother with any introduction. Fire away.

**Andrew Aebi, Bureau of Transportation.** OK. Hopefully you don't have any parting gift for me behind the table today. [laughter]

**Novick:** Not unless you've got news you haven't shared with us yet.

**Aebi:** So we are actually going to have four ordinances before you today. The fourth ordinance that is not on the agenda today is to amend the LID assessment methodology, and that'll be coming back on October 1st. We notified all the property owners of all four of these ordinances, and we did it in the same manner that we notify property owners prior to LID formation. So we had mail notice, we had posting notice, and we had publication notice. So just walking you through the three ordinances today. The ordinance to amend the LID boundary is because we executed a utility underground agreement with Karuna II, LLC to underground utilities on N Fremont Street between Vancouver and Williams avenues. In the process of doing that, it was clear that we need to remove a utility pole on the block to the east towards Cleveland Avenue. Because the LIDs use IRS tax-exempt financing, we're limited by the IRS to only spend LID dollars in the area of the LID boundaries. So, this is a boundary amendment to keep the IRS happy with how we use our tax-exempt funds. All of the cost of the utility undergrounding are being borne by Karuna II LLC, and nobody's spending any money for this work other than voluntarily. The next two ordinances are to approve the

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upgrading of two span wire signals, at Williams and Fremont and Vancouver and Fremont. They're currently span wires, we want to update those to mast arm and get rid of the most of the overhead wires consistent with the undergrounding. And it'll also be an easier asset for maintenance to maintain by making it mast arm as opposed to span wire. So that is really the gist of the ordinances. What I'm particularly pleased about is by incorporating these two mast arm signals in addition to the one Council has already approved at Cook and Vancouver, we're now in a position to bid out three mast arm traffic signals instead of one, and we think we'll have some economies of scale and can certainly do a better job of coordinating all that activity. We understand it's been quite a disruption to the neighborhood with the private construction going on, but we're going to try to expedite the public construction when it's time to do that. We're hoping to do that in February.

**Fish:** Andrew, I have a question directed to the transportation commissioner. Commissioner, I take this route quite frequently, particularly if I want to start my day at the St. Honoré bakery in northwest. And the Fremont is now backed up quite a bit in part because it's very difficult to make a left on North Vancouver in the morning. And it's difficult because there's a lot of traffic on Fremont coming east. So what happens is if you're lucky, you get past N Williams into a dedicated left lane -- it's about a third of the way into the block. But then you have to wait for the automobiles and bikes to clear the intersection. And so it's a very, very slow process. I don't know what the policy is, but would it be possible to at least evaluate whether a left turn signal would help traffic in the mornings at that location?

**Novick:** I can certainly ask if that evaluation has been done now, and if it would -- yeah, I will ask Peter Koonce in signals.

**Fish:** I will tell you, the practical effect of what's happened at that intersection is that people now bail on Fremont at Rooney and streets east of Rooney. So we're displacing a lot of traffic onto residential streets. I know we try to discourage that, because people are driving a little too fast and they're in a rush. While I'm not an expert on this, I think a dedicated arrow or a chance to clear a left on that turn might be beneficial. But I would just ask that it be in the mix for an evaluation.

**Novick:** I will ask Peter to get back to you on that forthwith.

**Aebi:** And I might just be able to shed some light on this. I have checked with Peter, and there's no ambiguity whatsoever that we need a left green arrow. So it definitely meets the warrants, there's no issue. Quite frankly, Commissioner, the issue we have is the funding for that. The ordinance before you today puts in place the mast arm signal. But the remaining component of putting in vehicle detection loops, putting in the left green arrow, replacing the controller box, and doing the full build-out of everything to the full standard -- I myself have checked to see whether we might have some general transportation revenue dollars to beef up the remainder of this intersection.

Unfortunately, our cupboard's bare. However, having said that, there is a directive in this ordinance that does allow me to negotiate an extra work agreement with a fourth property owner at the southwest corner of Fremont and Vancouver. I have had an initial conversation with him, and I'll present to him the ability to opt into the LID. If for whatever reason this left green arrow doesn't get built now, then that property owner will be required to fund that upon development of the property. That's currently vacant with a bunch of food carts on it.

**Fish:** Andrew, I appreciate that. And I don't want to be alarmist -- I would say that in my experience, where you have an intersection that's already that congested and there isn't a left turn signal, what happens is that people make the turns at their peril, because there's oncoming traffic and people trying get on. And after all, they're trying to get on North Williams because it feeds to the Fremont Bridge. So it's not an incidental left turn there -- it's a left turn, right turn at the Red Cross, and then you're on the bridge. My sense is it also has safety considerations. And there's a lot of bicycle traffic at that intersection, as well.

**Aebi:** I might also point out, Commissioner, this has certainly been a long-standing problem, but it is worth noting that right now, eastbound Krupp is closed due to some private development activity there. And I'm tracking that really carefully. So I think what have you right there is sort of a double,

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or maybe even a triple whammy. You've got the private construction on Fremont, you've got construction on Cook, which blocks the eastbound lanes. And then on top of that, as you correctly point out, you have all of that traffic coming down Fremont. But right now, we're in a position that all of the eastbound traffic where otherwise it would be dispersed between Cook and Fremont, it's over on Fremont. We are looking to have signals operational on Cook Street, both at Williams and Vancouver. And I do think once that medium term fix is in, where Cook now become as much more attractive route for people to get to the Fremont Bridge, it'll at least provide at least a little bit of a safety valve.

**Fish:** So I'm really glad you mentioned that. Because you're absolutely right, I learned that the hard way going on North Vancouver and finding I couldn't make a left on Cook because it's blocked. That also means that people taking Cook to the east as a way of directly getting to the Fremont Bridge are blocked from that route. The other alternative -- and I know that Portland's different from other cities -- but I wonder if at the peak times, at some point we could consider having a traffic control officer at the intersection to manage the problem in lieu of a left turn. I know we don't -- other cities, you see them all over the place. We don't really have that as an option. But I would hopefully consider tracking the safety issues there and seeing whether we're having an uptick in accidents or fender benders. It is a very congested area. You're absolutely right. With Cook closed, it creates another set of challenges for people.

**Aebi:** We are trying to work on the solution. It's not an easy nut to crack, but it's absolutely on our radar screen and we know we need to get this left green arrow done. Thank you, Commissioner.

**Novick:** Thank you, Andrew. I appreciate your answer to Commissioner Fish's questions, but I also did just email Peter Koonce to ask him to follow up on cost --

**Aebi:** At the risk of belaboring this discussion, but it's about \$127,000 for the remaining build-out, and that's the nut that we're trying to crack.

**Novick:** Thank you.

**Saltzman:** Thank you.

**Novick:** I don't always assume that you know everything.

**Aebi:** If I don't, I'll be sure to tell you.

**Saltzman:** Is there anybody who wished to testify on 936, 937, or 938?

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

**Saltzman:** OK, these are all emergency ordinances. Karla, please call the roll.

**Item 936 Roll.**

**Novick:** Thanks very much. Andrew. Aye.

**Fritz:** Thanks for the usual excellent work. Aye.

**Fish:** I must say, in addition to doing a superb job in Andrew's day job, he's also one of the three great Pilots fans in this building. So we appreciate that. Aye.

**Saltzman:** Great to see these traffic lights going in. Aye.

**Item 937 Roll.**

**Novick:** Aye. **Fritz:** Aye. **Fish:** Aye. **Saltzman:** Aye.

**Saltzman:** OK, 937 is approved.

**Item 938 Roll.**

**Novick:** I just have to say, I think it's kind of unfair all of Commissioner Fish's assets are underground, so I'm never in a position to say, you know what, I was just driving by that water pipe at 15th and Belmont and it really needs some work. So, I'm somewhat jealous of you in that regard. Aye.

**Fritz:** [laughs] Be careful what you ask for. Aye.

**Fish:** You know, I drove down Division yesterday, Steve, and your bureau is now completing the paving project. I have to say that looking at the bioswales and the work done on the paving -- which is not an easy job because of how congested that corridor is -- we're about a month away from that

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being a really terrific project. I know you and I are going to be welcoming back some customers and thanking businesses when we cut the ribbon on that later. So, congratulations. Aye.

**Saltzman:** Aye. 938 is approved.

**Aebi:** Commissioner, I neglected to mention we didn't receive any remonstrances or objections. So, I just wanted to get that on the record.

**Saltzman:** Thank you. We'll take a 15-minute break and convene again at 3:00 for our time certain.

At 2:47 p.m. Council recessed.

At 3:02 p.m. Council reconvened.

**Saltzman:** We will resume our 3:00 time certain.

**Item 939.**

**Saltzman:** OK, this hearing is on the record. And I'd ask Linly Rees to please describe the hearing and how it'll be conducted.

**Linly Rees, Deputy City Attorney:** This is an on the record hearing. It means you must limit your testimony to materials and issues in the record. I'll first discuss the order of testimony. We'll begin with a staff report by the Bureau of Development Services staff for 10 minutes. Following the staff report, Council will hear from interested persons in the following order. The appellant will go first, and will have 10 minutes to present their case. Following the appellant, persons who support the appeal will go next and will each have three minutes to speak to Council. The principal opponent -- in this case, the applicant -- will then have 15 minutes to address City Council and rebut the appellant's presentation. The council will then move directly to testimony from persons who oppose the appeal after supporters of the appeal conclude their testimony. After the principal opponent, Council will hear from persons who oppose the appeal. Again, they will each have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the opponents of the appeal. Council may then close the hearing, deliberate, and take a tentative vote on the appeal. When Council takes a tentative vote, it will set a future date for the adoption of findings and a final vote on the appeal. If Council decides to take a final vote today, that would conclude the matter before Council. There are several guidelines for those addressing Council today. First, the evidentiary record is closed. The hearing is to decide only if the hearings officer made the correct decision based on the evidence that was presented to him. This means you must limit your remarks to arguments to arguments based on the record compiled by the hearings officer. You may refer to evidence that was previously submitted to the hearings officer. You may not submit new evidence today that was not submitted there. If your argument includes new evidence or new issues, you may be interrupted and reminded that you must limit your testimony to the record. The council will not consider the new information and it will be rejected in the city council's final decision. Second, we have objections to new evidence. If you believe a person who addressed City Council today improperly presented new evidence or presented a legal argument relying on evidence that is not in the record, you may object to that argument. And finally, under state law, only issues that were raised before the hearings officer may be raised in this appeal to Council. If you believe another person has raised issues today not raised before the hearings officer, you may object to Council's consideration of that issue. And finally, one note for the applicant. The applicant must identify constitutional challenges to conditions of approval. If they fail to raise constitutional or other issues relating to proposed conditions of approval with enough specificity to allow Council to respond, then the applicant will be precluded from bringing in action from damages in circuit court.

**Saltzman:** OK, thank you, Linly. Do any members of Council have any ex parte contacts to declare, or information gathered outside the hearing to declare? Seeing no one. Do any councilmembers have any questions or other preliminary matters that need to be addressed before we begin the hearing?

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**Fish:** Just one thing, Mr. President. We had a hearing last week, it was a similar hearing in terms of on the record and there was an admonishment about not bringing new matters in. A couple of times, people who testified did attempt to bring things in. Now, we're not the best parties in a position to make that call. So I would just encourage counsel or the bureau staff -- if something comes up -- just to be forceful in bringing that to the attention of the president. Because otherwise, it may be something we would otherwise miss if we're not as familiar with the underlying record.

**Rees:** So perhaps a question ahead of time is would you prefer that to be brought to your attention immediately or at the conclusion of someone's testimony?

**Saltzman:** I would say you should do it immediately.

**Rees:** OK.

**Fritz:** I have a question about the city attorney's comment about the challenging the constitutionality of conditions of approval. I haven't heard that before. Is there a suggestion that the applicant is challenging any of the conditions?

**Rees:** There is not. It's a state law requirement so that we can cut off any potential challenges to conditions of approval. It's in our standard spiel.

**Fritz:** I have never paid attention to that particular element. Thank you very much. Mr. President, I have a note that I have to leave at 4:00 to represent the city at the Future Connect scholarship awards. I apologize for that.

**Saltzman:** OK, great. Let's begin with the staff report.

**Rachel Whiteside, Bureau of Development Services:** Good afternoon, members of council. My name is Rachel Whiteside, and I'm the assigned Bureau of Development Services planner who will be presenting the hearings officer's decision for this land use case. The purpose of this proceeding is to hear the appeal by the Woodstock neighborhood association of the hearings officer decision for the approval of a zone change in conformance with the comprehensive plan from R5 to R2.5. And concurrently under [indistinguishable] proposal to create three lots for the property at 3936 SE Reedway. Their request for a base zone change in conformance with the comprehensive plan is subject to the Type 3 process and the approval criteria in PCC 33.855.050. A land division request must meet the approval criteria in 33.660.120. On its own, this land division proposal would not be subject to an appeal before City Council because it's part of the overall Type 3 process. The Woodstock neighborhood association appealed the decision to approve the land division based on failure to meet the land division criteria's A and I. Criterion A is the lot criterion, and there are two purposes statements in Chapter 33.611 that come into play for the R2.5 zone. The neighborhood association believes that the proposal fails to meet both purpose statements, and that the narrow lots -- that is, lots that are less than 36 feet wide -- are not similar to or compatible with the surrounding lots. Building on their objection to the narrow lots, the appellant also cited criterion I, which is the solar access criterion, indicating that the resulting lots will not provide adequate solar access to adjacent properties. The appellant did not cite any of the zone change criteria, therefore, they will not be discussed in this presentation. Here's the zoning map, and as noted, the current zoning is R5 and the comprehensive plan designation is R2.5. You'll see the R2.5 comp plan designation is fairly consistently applied along the blocks adjacent to arterials such as Woodstock and Cesar E. Chavez Boulevard. For frame of reference, the site is a corner lot with frontage on both SE Reedway Street to the north and SE 40th Avenue to the east. The house is proposed to remain, but the garage and in-ground pool will be removed to accommodate future developments. The applicant is proposing three parcels. Parcels 2 and 3 are narrower than the minimum width for the R2.5 zone, as shown on the table here. The zoning code, however, allows narrower lots if the future development can meet the regulation of section 33.611.200 C2, commonly referred to as the narrow lot criteria. The first of these criteria require that, quote, on balance, the proposed lots will have the dimensions consistent with the purpose of the section. The section purpose contains nine statements, only one of which is in question here. That is that, quote, lots are compatible with existing lots, while also considering the purpose of the chapter -- the purpose of the chapter referring to chapter 33.611, lots in the R2.5

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zone. The chapter purpose statement allows for variation in lot size and shape provided that the planned intensity of zone is respected. Regarding the chapter purpose statement, staff found that the planned intensity of the zone is four units for a 10,000 square foot site, and the applicant is proposing three units. Therefore, the planned intensity is being respected. The code must provide flexibility for lot dimensions because it is not possible to re-develop a standard 100 by 100 lot to the intended density and still meet the standard lot dimensions – notably, lot width -- even when the site is vacant. Staff also noted that keeping the existing house precludes any redevelopment that can meet minimum lot width, even under the current R5 zoning. Regarding the compatibility requirement, the hearings officer turned to the dictionary definition, because the term is not defined in Chapter 33.920, which is the definitions chapter of the zoning code. Webster's defined compatible as, quote, capable of existing together without discord or disharmony. The hearings officer went on to determine that the dictionary definition does not require that lots be, quote, identical, similar or consistent with surrounding lots, stating if that was the intent the purpose statement would so read per ORS 174.010. He also found the opponent's objections to be largely aesthetic and that meeting the compatibility purpose statement does not require that the proposal is necessarily, quote, the best option. With regards to the solar access criteria, staff found that parcels one and two are on the south side of an east-west oriented street, and parcel two should be wide -- and it is. Parcel three is the only lot oriented towards a north-south street, so there is no preference. The diagram on this slide is from Chapter 33.639, the solar access chapter. The hearings officer agreed with staff findings and testimony that the solar access standard criteria are prescriptive. He concluded that the criteria do not impose a generalized prohibition on certain lot configurations, or forbid future development from casting shade onto adjacent properties. And I've included the diagram here, because you can see the lots that would cast shadow are going to be those on the south and the west. In this case, proposed parcels two and three are going to be north of or east of existing developments and therefore would not be in a position to cast shadows on those properties. As part of his decision, the hearings officer included conditions of approval for the land division included on the list here. Specifically, I want to call your attention to condition C8, which restricts an attached garage for future development. The condition as written fails to identify which parcel it applies to, though the findings on page 14 of the land use decision indicate that it applies to parcel three. I would recommend that Council consider clarifying which parcel this condition affects if they choose to uphold the land use decision. The alternatives before council today are to deny the appeal by the Woodstock neighborhood association and thereby uphold the hearings officer decision for approval of the proposal. Or uphold the appeal, thereby overturning the hearings officer decision. Council may overturn just the land division application or the entire proposal. This concludes my presentation. I can answer questions now or following the remaining testimony.

**Fritz:** Well, you answered one of my questions about which lot should not have a garage. Could you just clarify why it should not have a garage?

**Whiteside:** It should not have an attached garage because the lot is not wide enough to accommodate a house that exceeds 22 feet in width. So a garage -- an attached garage is only allowed on a house which orients towards the street and has facade that's at least 22 feet wide.

**Fritz:** So it wouldn't fit anyway, why do we need a condition that it can't have one?

**Whiteside:** It's to comply with the code standards.

**Fritz:** OK. Thank you.

**Saltzman:** Any other questions? OK, thank you. So we'll now hear from the appellant, the Woodstock neighborhood association. Do we have representatives?

**Terry Griffiths:** Hello.

**Saltzman:** You can give those to Karla. Everything you're giving us is part of the record?

**Griffiths:** Yes, absolutely. Thank you.

**Saltzman:** If you could just give us your name and then have you 10 minutes.

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**Griffiths:** I won't take that. Members of the council, my name is Terry Griffiths. I live at -- I guess I'm supposed to say where I live.

**Saltzman:** No, you don't need to say that.

**Griffiths:** Alright. I live in the Woodstock neighborhood and I'm the co-chair of the Woodstock neighborhood association land use committee. Most of our objections to the proposed partition at 3936 SE Reedway has to do with the compatibility of the proposed development with the existing character of the surrounding neighborhood. You are undoubtedly aware that the issue of compatibility is a foremost cause for neighborhood ire toward recent infill development. As I listen to neighborhood voices, there are two major complaints related to compatibility that I hear. One is that many of the new houses being built are vastly out of scale with existing neighborhood development. I have heard more than one reference to, quote, that monster house. A second and related cause for criticism -- and we believe this is important -- is that by building up to the maximum allowed height and to the edge of the required setbacks, developers are leaving virtually no garden space for the homes they are building and are impinging upon needed solar access for neighboring yards and garden plots as well. In the case of this proposal, the existing house is to remain. But two new lots are to be squeezed into the space of the former yard on the west and south sides of that existing house. The result is that the newly-created lots are out of character with the historic development pattern of the neighborhood. The proposed new lots do meet all the development standards for the R2.5 zone with the exception of 33.66200 C minimum lot width -- you've already heard about that from staff. And that minimum lot width requirement states that each lot must be at least 36 feet wide. The proposed lot widths have been reduced in this case in order to shoehorn the two newly-created lots around the existing house. Our observations of houses recently built on narrow lots are -- again -- that they tend to be built to the maximum height allowed, and also out to the maximum setbacks. Therefore, we anticipate that the existing house will be overshadowed by the homes on the new properties to the south and to the west and that all the charm of that existing house designed to fit comfortably in the space of that original lot will be destroyed. Further, that the original house and lot are in integral part of the special place in our neighborhood, an intersection comprised of a cluster of historic houses. We are devastated by this threat to a valued corner of our neighborhood. We submit that somehow, more attention must be paid to the context of newly-created infill development. Thank you.

**Saltzman:** Thank you.

**Rees:** Commissioner -- before questions, I need to interject on the record, since you'd asked me to do so in the middle of the testimony. There are a number of documents in the folder. The first is a zoning map, which is in the record. The second is a site plan which is also currently in the record. There is following a petition of numerous pages that's dated July 30th, which is subsequent to the hearings officer's hearing, so that clearly doesn't belong in the record. There's three pages of pictures. It's my understanding these particular pictures are not in the record at this time. I conferred with staff and with the applicant, and they're not aware of these pictures having been in the record. So it would be appropriate for the council to --

**Saltzman:** Disregard the petitions and the photos.

**Rees:** Specifically, reject these as being part of the record.

**Saltzman:** OK. If there's no objection, we will disregard the petitions and the photographs submitted.

**Fritz:** I have a question for Ms. Griffiths. Would the neighborhood prefer the house be demolished and have three lot sizes that are more compatible with the neighborhood?

**Griffiths:** That's an excellent question, and we've discussed it. And I have to say, there's not consensus about that. Some people would prefer that. You know, that's about the best I can do. We haven't really discussed it.

**Fritz:** Obviously, that's not related to the approval criteria, either. I just wanted to know --

**Griffiths:** No, it's a predictable question.

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**Fritz:** We're talking about the character of the neighborhood, and if the issue is the size of the lot versus the character of the house. Thank you, I appreciate your answer.

**Saltzman:** Thank you, Ms. Griffiths. OK, are there supporters of the appeal who wish to testify?

**Moore-Love:** Yes. Seven people signed up. The first three, please come on up.

**Saltzman:** Welcome, you each have three minutes and all you have to do is just give us your name.

**Merrilee Spence:** My name's Merrilee Spence. I'm opposed to the proposed lot division because it is not compatible with the surrounding area. This area of Woodstock borders the Eastmoreland and Reed neighborhoods, both of which are predominantly R5, with R7 in some areas. I was absolutely shocked to learn that 30-plus years ago, someone had seen fit to designate the zoning for this area as R2.5. I suspect that none of the residents at that time -- and it is clear that none of the current residents -- were aware that it had been zoned for that level of density. The actual current density for this lot and the contiguous blocks is closer to R7. To arbitrarily divide one lot to R2.5 density is a substantial change and one that is clearly not compatible with the rest of the area. The hearing officer found the compatibility issue difficult, since the zoning code does not define compatibility, even though it uses that term as a criterion. Why did he not consult the comprehensive plan to help assess compatibility? What do we have a comprehensive plan for if the Bureau of Development Services ignores it? There are no other lots nearby that are less than 50 feet wide, yet he found lots not meeting the required lot width of 36 feet to be compatible. There is no objective criterion that makes such a finding reasonable. The current comprehensive plan section 12.6 on preservation of neighborhoods should be used when evaluating applications for lot partitions. This current proposal is clearly in violation of all three objectives of that section, which include preservation of the positive qualities of the area to be developed, respect for the fabric of the neighborhood, and building on the attractive qualities that distinguish an area. Adding two new houses that will tower over an existing house and be much narrower than any of the other houses or lots in the area does not meet any of these objectives. This proposal is exactly the sort of development that section 12.6 appears to have been written to address and discourage. Developers need to be required to demonstrate compliance with this section. As I alluded to earlier, the Bureau of Development Services takes the position the only part of the comprehensive plan to which they adhere is the zoning designation. They claim they do not need to comply with any of the positions in section 12, urban design. If this is an appropriate position for the Bureau of Development Services to take, I don't understand why Portland has a comprehensive plan and why we are spending so much time and money working on a revision. Perhaps we should shelve the revision and redirect the funds being used towards fixing the streets. Thank you.

**Fish:** I have a question. And thank you for your very thoughtful testimony. I'm assuming, Linly, that it is not within our power to question the underlying zoning -- that a designation in the code is what we're bound by. If 2.5 is authorized, then we have to accept that for purposes of the statutory interpretation.

**Rees:** That is correct. It's the comprehensive plan designation. This is a zone change to be in compliance with that comprehensive plan designation.

**Saltzman:** Sir, give us your name, and you have three minutes.

**Paul Anuschat:** I'm Paul Anuschat, I live two doors east of 3936. I want to speak on the traffic issue. The Woodstock neighborhood association raised traffic concerns at the BDS hearing in June regarding parking congestion, narrow obstructed Reedway parking on the street nearby, and access from Cesar Chavez 39th up a substantial hill. The city traffic analyst stunningly discounted such concerns, essentially saying the plan was no big deal for traffic flow and safety needs. Further, with regard to traffic, there is major adjacent arterial work on Woodstock where retail expansion is going at full tilt in the coming months. This expansion will inevitably lead to increased traffic flow on the few paved streets near the retail area. The 3936 property is situated on a focal corner in both east-west and north-south routes that are alternative to Woodstock. We have some few paved streets nearby, such as the 3936 intersection, which allow a bypass to Woodstock -- or from Woodstock, I

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should say -- when there's congestion. No such bypass exists on the south side because so many streets are unpaved. Already, we see a flow of hurried side street traffic on our streets in order to avoid congested retail Woodstock as it is now. It'll only get worse. Approval of the 3936 plan will exacerbate the problem on the site intersection directly as retail growth expands. Given the design of the 3936, additional congestion, accidents, and injuries will surely result. Secondly, on the character of the neighborhood and compatibility, you've the chart with the three varying lot sizes. I ask you to look at them. Do they make any sense in a neighborhood whose character involves an array of substantially uniform lot sizes, the overwhelming preponderance of which are within the minimum lot widths? None of those represent any of the greater neighborhood lot dimensions. What is the result? A haphazard, crazy quilt subdivision of lines and borders -- and to what end? I don't believe the neighborhood any many of the neighbors who signed the submitted petitions -- which you're not going look at -- object to reasoned property renewal or the alterations that meet the needs of the city, the property owner, and the neighborhood. However, the current property owner has shown no direct interest in making his intentions compatible with the character of the neighborhood, nor with its security. I make this assertion in all seriousness, given the absolute and continuing neglect of existing property these past many, many, many months. If this proposal is validated by the city council, it sets a monumentally bad precedent regarding lot sizes, and it reflects a calculated indifference to relevant neighborhood concerns. Thank you.

**Saltzman:** Thank you. Give us your name, and you have three minutes.

**Les Szigethy:** My name is Les Szigethy -- I won't spell that, because sometimes I can't myself. I come before you today to ask for your help. You will hear from my neighbors that this proposed project with its undersized lots is inappropriate and incompatible with the neighborhood. The hearing officer who admitted to never having seen the property would have to have noticed that the proposed development has absolutely nothing in common with this block of large trees and 100-year-old houses. If our goal as a city is to plan on preserving the existing neighborhoods and allowing compatible development, then this proposed project fails any test of those metrics. While this is all true, it is not the most important for you to not allow this appeal. You will also hear from my neighbors that this proposed development will totally block solar access for remaining homes and neighbors. The proposed development puts a 30 foot tall skinny house on both the south and west sides of the remaining home. The residents of the remaining home will live in perpetual gloom, a situation none of us in the room would want for ourselves or our families. City staff would deny this, but it is true. However, it is not the most important part of this appeal. The pictures have you seen show a seven-foot-tall stone wall on Reedway Street that must be breached in order to create a driveway for one of the undersized lots. This creates a dangerous situation where someone walking on the sidewalk would be invisible to a driver backing down the steep tunnel to access a steep and already blind street. City staff at the previous hearing stated, this is not so bad, you should see some of the driveways in the West Hills. I totally reject that this type of dangerous situation in the West Hills should be created here as our standard. If for no other reason than this poorly conceived and unnecessarily dangerous driveway, this proposed development should be denied. Despite all of this facts, none are the main reason why this project should be rejected. Here's the main reason the project should be denied. To quote Hillary Clinton from one of her books, change is inevitable, progress is not. I think all of my neighbors here understand accommodations must be made as the city grows. The urban growth boundaries have come home to roost; we must grow from within, not by sprawl. I think it is fair to say that your predecessors confronted these types of situations. Those that sat in your places in past years were often confronted with the option of change or progress. Obviously, they made the right choices, as evidenced by the attractive and desired neighborhoods that make up our city. This proposal must be rejected not so much for what it is, but for what it represents. An ill-conceived plan that is not compatible with the neighborhood is not progress. Accepting a plan that plunges an existing home into perpetual darkness is not progress. Accepting a dangerous driveway is not progress. This is your opportunity to help define

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what we will accept as a community as growth. This is your opportunity to make sure this change must be defined by progress. By denying this proposal, you will continue the example set by your predecessors that change is inevitable but only if we insist on progress. Thank you. [applause]

**Saltzman:** Thank you. Welcome. Give us your name, you'll have three minutes. There's a clock in front of you.

**Rebecca Luening:** My name is Rebecca Luening, most people call me Becky. I am here today to give testimony pertaining to the solar access question, which I believe you do have a handle on. I just wanted to say that in the staff testimony a minute ago, she said something about the new subdivided lots being on the north or the east of the property when in fact they are on the south and the west sides of that property. Anyway, according to BDS literature, the FAQ about solar access regulations states that Portland's solar access regulations encourage variation in the width of lots to maximize solar access for single dwelling detached development and minimize shade on adjacent properties. The findings of BDS staff in the solar access approval criteria in their report of May 16th -- which is supported by the hearings officer in his decision -- however, ignore the fact that the subject proposal likely will result in serious loss of solar access from the south and from the west on the existing home on parcel one, and will also significantly block morning sun for the home on the adjacent property which lies just below and to the west. You know, we would appreciate people actually coming into our neighborhood and looking at these proposed building sites in person, thinking about things like where the sun shines and how much light will be blocked if a lot is carved up in this way or that. In the absence of such consideration, I have submitted a photograph. This was in the previous record. I have added a better caption for that, which is attached to my testimony. It's come to my attention that Portland solar access regulations really have no teeth, which puzzles me for a city that's so famous for its rainy days and for its -- you know, it has this green reputation. You would think we would be doing everything in our power to preserve access to sunlight for as many residents as possible. As you probably all know, solar access is critical for people's mental health. It's really important for anyone who's an urban gardener interested in growing their own food. There's a lot of people now who want to be generating solar power for themselves. My husband and do I all of these things. We have a garden -- I'm an active gardener. We've installed solar TV and solar hot water systems, and they function very well here, as long as you have decent access. When I saw this lot on Reedway, I noticed what a beautiful home it was, what a beautiful lot, the way it was set there, the way that it used the light. And to allow this subdivision will be a great loss. Many of the greatest features of that lot will be squandered. So please consider these solar access regulations very carefully, thank you.

**Fritz:** Ms. Luening, I very much appreciate your comments. I did read your letter. I agree with you that the solar access regulations have no teeth. They were gutted in the 1990s. I encourage to you participate in the comprehensive plan progress, because we know a lot more now about climate change and efficiency than we did then. And then hopefully we can put them back to the way they were.

**Luening:** I just want to say, I really hope that the next comprehensive plan will lead to better code, but I'm also aware that these code changes take time. We in Woodstock are being hit especially hard with these kinds of overly large developments that are shading people's adjacent homes and taking away privacy. I would encourage the council to work with neighborhoods to find a way to address this before this comp plan process is completed.

**Fritz:** Unfortunately, we're not able to. That's the way the state land use laws go -- is that it has to go through a planning process and go through the planning commission.

**Luening:** What about the moratorium on snout houses that was enacted in the 1990s? What was that process?

**Fritz:** We could go into that -- [indistinguishable]

**Luening:** I wish you would. Thank you.

**Saltzman:** OK, thank you.

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**Mary Kay Tetreault:** Good afternoon, my name is Mary Kay Tetreault, and I live at 3937 SE Reedway -- my husband and I -- in the house directly across the street from the property in question. I'd like to speak to preserving the historic character of one section of the neighborhood. Woodstock is a historic neighborhood, a mix of houses from the turn of the last century to houses filled in after World War II, and particularly through the 1970s. The corner on which our house is located, the corner of SE 40th and Reedway, is one of the most historic in the neighborhood. You have in your packets images of the four houses on the corner. One is the property in question -- and I'd like to just hold up our house on 3937, on the northwest corner. It was built in 1929. The house on the northeast corner in 1905. You can see the character of those houses.

**Saltzman:** Are these the pictures that we're not supposed to be looking at? [laughter]

**Tetreault:** Should I stop showing you?

**Saltzman:** You should.

**Tetreault:** OK. One on the northeast corner in 1905, and one on the southeast corner in 1916. And in addition, the house on the corner on Chavez or 39th and Reedway was built in 1911. So you have five houses built between 1905 and 1939 within sight of one another. Our house was originally on a city block that stretched from 39th to 40th on Reedway, but it was subdivided in the '70s. Three houses were built on Chavez between Reedway and Ellis, and it's taken more than 25 years to grow a green barrier between those houses and ours. A large canopy of trees on Reedway exists between 39th and 40th, and although the city has tagged the trees for preservation, I imagine it would be unlikely considering the garage and so on that there weren't at least one of the trees would come down. I've been surprised at the number of cars that stop under those trees where the driver is talking on the phone, texting, resting, taking shelter in the shade. It seems to be a place in the neighborhood where people figure out they can stop and reflect for a moment. I write in the morning, and one morning I heard a heavy engine making a horrendous noise. I tried to ignore it, but I couldn't because it was so predominant. I went out to see what was the matter, and there was a huge black pick up sitting under one of the trees. The windows were up, and I motioned to the owner of the pick up, like, what's this noise about? He looked at me and went, shhhh. And we went back and forth, me asking him what this noise was about, and he saying, shhh. Finally, he said, shh, my daughter is sleeping, I'll be here only 10 more minutes -- I needed a shady spot to park on a hot sunny day to keep my baby from waking. Well, having dealt with sleeping babies myself as a mother and as a grandmother, I understood and walked away. Thank you.

**Saltzman:** Thank you.

**Len Norwitz:** Greetings, councilors Fish, Novick, Fritz, Saltzman, and Mayor Hales who's not here. My name is Len Norwitz, I live five houses down on the corner of Ramona and 40th. And I'm going last I guess for a political reason in that I want to talk about politics for a few minutes. We had a Labor Day picnic on our block just three or four days ago, where many of those petitions that you're not looking at got signed. And we didn't invite any of you only because the issues that are being discussed around here are pretty incendiary. So another reason we're here is that a zoning plan set up in the '80s in anticipation of growth is now at odds with our world in 2014. And I thank you for that fact that this hearing is actually happening, because I know it doesn't happen always on these kinds of issues. I'm here to emphasize the issues of neighborhood livability, the conundrum we have in the area of trusting our public officials and public workers, and the idea of rewarding bad actors at a time when the public is set up with the rhetoric around all three of these things. None of these answers we are producing these days are working well around the issue of trust -- and I say we because I am employed as a political staff person for a public employee's union. We are all under a large microscope to do more with less, and we live up to ideals that we talk about and campaign on all the time. So, are we talking or walking the talk? I know we've been hearing a little bit about what the zoning code says. What I want to respectfully submit is that this is a case of a speculator getting rewarded for laziness, greed, and disrespect. This property was bought 16 months ago from my remembrance, not a thing has been done to it, and his insistence on not dealing with

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the neighborhood association I think is getting all the kinds of response that you're hearing and have been hearing over the last few months. I think it's really important that you are -- that we all do more and work towards that tender trust with the public. And I should know, because many of you come in and we talk about how, in your campaigns, we can win the public over and how we need to focus on issues of wealth inequality and income inequality, and the issues of racial and ethnic and gender equity -- which I know you're doing a lot of work on. I will close by saying is I think that this is not about raising votes and wrestling with the things the city has to be focused on. I actually think that it's sinking them. Now, these units will not be affordable. For coming in with two more housing units, I think we're going to find ourselves running a lot of folks off and pissing a lot of folks off, which you're hearing about today. So, we the neighbors will miss the folks who are leaving. And they've left a lot of other neighborhoods which we could list here. But in my last 15 seconds, I am going to say, I would ask you to allow this guy's efforts until he comes in and talks to the neighborhood association in a way where folks can be owning a decision about this property, or properties like this. And I would encourage you to ask that be happening in the future. Thanks.

**Fish:** Can I just respond to one point you made? I don't remember in six years someone making such a pointed argument about the quote unquote politics of this proceeding. I just want -- I feel obliged to comment in two respects. One is, had any of us been invited to come to a Labor Day picnic and meet with the neighbors and discuss the issues is tour the property, we would have been disqualified from hearing this appeal.

**Norwitz:** Gotcha.

**Fish:** So I appreciate that you didn't invite us, because it would have created a conflict that could not have been resolved and it probably would have made it impossible to get a quorum of the council to hear the appeal. But the second thing is, we take our responsibilities on this council very seriously on land use matters. This is the most heavily regulated and prescribed area of the law that we -- and you know, we have three hats, we're legislators, we're administrators, and we're judges. And I appreciate you framing your argument in a larger context, but I'm going to respectfully push back and tell you that at the end of this hearing, once we've heard all the facts and all of the arguments -- and so far, I would say this is one of the better hearings I've attended because of the thoughtfulness of the testimony and the presentation. Our job is actually to follow the prescriptions that council gives us about what's the law and what we can and can't do. So, yeah, I come with an open mind. We have not -- the record has not been closed, and we have deliberating to do. But I would resist the temptation to sort of politicize this part of our work. You can be critical of the code, the underlying zoning, the history, but we are bound by what's before us, and we'll make our best judgment. But I think from your point of view, it's best to keep some of the politics out of this proceeding because I'm not sure historically neighborhoods have done as well as they could if it was politicized. So, I just offer that.

**Norwitz:** You're not asking me for a response, but I just came to say that I came to talk about politics. That's what I came to do. I live four doors down, and I think sort of entering it in may not be a part of the record but it's something that I feel very strongly about.

**Fish:** You have the privilege to make the point that you want to make to us. I just -- I feel obliged to defend the integrity of the process, because we try not to allow the politics of the moment to guide our actions. We are bound by the record and the legal framework that's before us.

**Norwitz:** I understand that fully.

**Saltzman:** OK, thank you. Were there any further supporters of the appeal?

**Moore-Love:** Yes, we have possibly three more.

**Saltzman:** OK, last call for supporters of the appeal. Welcome. Just give us your name, and you each have three minutes.

**Corrine Lyons:** I'm Corrine Lyons, and my house sits just west of the smallest proposed lot. And I would say that my lot is an R7, and most of the lots -- as was mentioned earlier -- are R5 and R7 in our neighborhood. The R25 zoning is not an argument here, and that's just what I want to bring up

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is that this is an exception to the R25 because these lots are smaller than an R25 zone. So, that is my number one objection to this, is that we're not arguing that they are asking to build a legal lot. They're asking to build an exception to the lot. And I think that when it came up that there's not going to be a garage on one of the lots, because the house is too small -- which it would be 22 feet wide -- it's a little bit eye-opening with the other homes that are surrounding this existing lot -- for those to go up. I know that can work in some situations, but it really does not work where we live. And maybe there is a different option. The owner of this lot has never once made any effort to work with the neighborhood in the way of trying to be compatible with our desires. I have lived there for eight years, and most of the neighbors have lived there for longer. So, I just wanted to say, please respect our desire to keep our neighborhood friendly, and we are not against infill or development. But please, keep it so that our neighborhood is not destroyed by this shoehorn of two houses being kind of squeezed in, and taking the appeal out of our neighborhood. I would just ask that you stick with the R25 zone law and say no, these are smaller than that, and it's not going to work here.

**Fritz:** So if that was done, that would mean removing the house. Would that be your preference?

**Lyons:** I've seen that done very close to our neighborhood, and some of my friends here would say no to that as well. But I've seen developers do that in a very tasteful way right within Eastmoreland neighborhood, which is just around the corner from us. We're above Reed canyon, we're right above Reed College, and some developers have gone to great lengths to build homes that really complement the neighborhood. And what's going to happen here is in no way, shape, or form going to do that.

**Fritz:** Thank you.

**Saltzman:** Just give us your name and you have three minutes.

**Jeff Krater:** I have a prepared statement. My name is Jeffrey Krater. I live and work as a self-employed general contractor. My CCB number is 83122. I've worked in the trades from 1986 after completion of my studies at the Pacific Northwest College of Art. I am a carpenter, and began remodeling homes in the Buckman neighborhood and Ladd's Addition. Since the year 2000, I have worked primarily with two developers building and remodeling commercial structures, midcentury homes, and building infill projects. My testimony today is in large part due to the inspiration and the work of one Margaret Strong. Do you know Margaret Strong?

**Fish:** I believe I occupy the office that she once occupied.

**Krater:** Very good. I lived in northwest Portland from 1984 to about 1987. And being an art student, I had privileges to go places and talk to people, and I was able to meet her and talk with her. And her spirit, her passion for citizen involvement, and planning to make this town livable was -- it's unbelievable. And I haven't seen that since, and I wish I would see it. I oppose the hearings officer's decision to approve the lot proposal before you. The proposal results in two lots being of subminimum width. The two lots have no precedent within our neighborhood. The example cited in the report is an aberration created more than 70 years ago. It's something like somebody walking outside their house and looking both ways on their street and saying, my street is fine, why do we need street revenue to repair the rest of the broken streets? This situation is not isolated. We live in a community. These two lots and the structures they prescribe have no relationship to any existing homes, historical or otherwise. They are completely incompatible. The structures being built will look foreign and ill-placed. When we remodel, we always begin with the motto, what can we do to make it better and how we can respect what has already been? These taller than wider homes placed at right angles will create a backstop to the existing home. The reality of this will diminish any possibility for this home to be reborn. This factor will be instrumental in reducing this home to demolition. It'll probably be replaced with two new stall and skinny houses. [beeping]

**Saltzman:** Time is up.

**Krater:** That's it.

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**Saltzman:** OK, thank you. We'll now turn to the principal opponent, which is the applicant in this case. And the applicant will have 15 minutes. Welcome. Just give us your name, and you have 15 minutes.

**Mike Robinson:** Thank you, President Saltzman and members of the council. My name is Mike Robinson, I'm here on behalf of the applicant. What I'd like to do is to divide my 15 minutes into two areas. I'm going to start by giving you testimony explaining why, in our opinion, the hearings officer's decision is a correct application of the law that you are bound to apply, why it is supported also by substantial evidence in the record. And before I conclude, I'd like to respond to the testimony you have heard today. I agree it's thoughtful. Most of the folks I encounter -- even though they rarely agree with my clients -- are often pretty thoughtful and polite about it. So I think that it's appropriate to try and answer the questions that they've asked today, and I will try and do that. And then lastly, before you close your hearing, if you have questions that I can answer, I invite you to ask me. I want to try and answer whatever you have in mind about this. First of all, of course we ask that you reject the appeal and affirm the hearings officer's decision. We think his decision is correct. It correctly applies the applicable approval criteria and is supported by substantial evidence. He relied to a large extent on the staff report and on the application. I have to say, we agree with the staff report we've heard today. We think that it was exceedingly well done, and it probably reduces the amount of time I need to speak by five minutes. So, I hope that I can use the staff report to be a little more efficient today. What's before you is not a contest about the zoning in conformance with the comprehensive plan map designation of R2.5. The appeal expressly says we understand that has to be approved. What's before you is the partition, and as a subset of that, the solar issue. So, the first thing I want to note -- and you certainly have this in the record before you, but just let me hold up the map again. This is a map from both the staff report and the hearings officer's decision. The hatched area -- this is what I'm showing council. The hatched area is the site that's before you. It's surrounded by the area designated on the plan for R2.5 zoning in conformance with the plan. When you go east of 40th Avenue, then you get into an R5 area that's not designated for further zoning change. This area is surrounded by that change. That's a conscious decision that the city council has made, and that's why the zone map amendment is certainly appropriate. It's consistent with the plan. Secondly, the hearings officer correctly concluded that the application meets the code requirements for a narrow lot. There are three parcels that are proposed. One, two, and three. And the parcels two and three are the narrow lots. If you want to look at a chart that's helpful in describing what's being proposed, it's on page 11 of the hearings officer's decision. Parcel two is proposed to be 33-foot wide -- that's three feet of deviation. Parcel three is proposed to be 31.75 feet wide -- that's 4.25 feet of deviation. And as the hearings officer noted on page 11 in his decision, neither of those parcels are particularly large deviations from what's required. They're frankly within what the city could have anticipated when it adopted the code.

**Fish:** Sir, let me ask you something. If the council did not agree with the deviation, what was your client's position be?

**Robinson:** Well, I'm going to explain also that we believe because you have to apply compatibility standard to the deviation, Commissioner Fish, that is not a clear objective standard. And were you to find that it's not compatible, we believe that would be an appropriate thing to appeal on a Land Use Board of Appeals. If you didn't appeal with the deviation and if LUBA didn't reverse the council, then the choice might be to tear down the house and do three or four lots that meet the standard. But the record reflects that it's the applicant's desire to save at that house. No one is proposing removing the house. Did I get anywhere close to answering what you were asking?

**Fish:** That was helpful, thank you.

**Robinson:** Thank you. So, I thought what the staff report did really well was explain that was a sort of a cascading analysis that you have to apply in terms of the approval criteria. And out of all of these approval criteria, there's really only two that are issues. So if I can just refer to them. The first thing you have to find is that as the hearings officer did, this application is consistent with the

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standards for narrower lots, and there are six of those found in 33.611.200.C2, A through F. The only one that is an issue is sub A, which provides, on balance, the proposed lots will have dimensions that are consistent with the purposes of this section. So, before I tell you what the next section is, note the language, on balance. This is not a criterion that requires you to find that each purpose statement is met. It expressly provides balancing, and there's ample case law in this state on what balancing means. So in this case, I simply note that a prior council saw fit to include the phrase, on balance, which means you are balancing all of these purpose statements, and that takes you to the next section. By the way, out of those six approval criteria, this is the only one that's challenged. That takes you to the purpose statement for the section, which is 33.611.200.A that has nine purpose statements. Out of that, again, only one is challenged -- it's the ninth -- and that requires that lots are compatible with existing lots while also considering the purpose of this chapter. So again, the instruction of this code is you look at compatibility with existing lots from the lots that are proposed. So if it's appropriate for me to stop here -- we're not looking at compatibility with dwellings or what's proposed to be constructed. In fact, you won't find in the record what's going to be constructed. Because we don't -- it's not part of the approval criteria, therefore, it's not part of the application. What's required -- what the hearings officer correctly did was determine that these lots were compatible with existing lots while also considering the purpose of the chapter, which is 33.611. And then you get to that last section, and that's the purpose statement for that chapter. Here's the relevant language. These requirements ensure that lots are consistent with the desired character of the zone. So let me stop there. The analysis, again, is not the desired character of the neighborhood or the historic character of the neighborhood. Having said that, I appreciate what these folks had to say about that. But I am bound to tell you what the law requires, and it's very clear. It's not an analysis of the character of the neighborhood or the historic character of the neighborhood or an impact on houses. It's these requirements ensure that lots are consistent with the desired character of the zone while allowing lots to vary in size and shape, provided the plan intensity of the zone is respected. The reason the hearings officer ultimately found this satisfied -- the purpose section satisfied and the standard for narrow lots satisfied is that this application does exactly what the purpose of this chapter and this section requires. It's compatible with existing lots, and it allows lots to vary in size and shape -- that's why you have the narrower lot -- and it provides that the planned intensity of the zone is respected. Ms. Whiteside noted in her staff report that whereas this site would be capable of accommodating four lots under R2.5 zone, this applicant has requested only three. Part of that is to allow the preservation of the existing dwelling. I thought -- Commissioner Fritz, her questions about whether folks would propose that -- prefer that or not -- were appropriate. I heard some ambiguity on what the answers might be. But from the applicant's perspective, we think that it's a house worth leaving there. And that's why we're proposing only three lots instead of four. And we need to use the narrower lot standards to make two of the three lots slightly more narrower. So when you look at the criteria, we meet the standards for the narrower lot, because we meet the purpose statement of this section, we meet the purpose statement of the chapter because it is consistent with the desired character of the zone -- which is a more intense zone with smaller lots -- while allowing lots to vary in size and shape, were -- and we provide for the intensity of the zone. That in a nutshell is why the hearings office found that this application provides substantial evidence to determine it could be approved. Now --

**Fritz:** Mr. Robinson, thank you for addressing that. I do apologize that I have to leave. I will be reviewing the records so that I can participate in the vote.

**Robinson:** Thank you.

**Fish:** Can I ask you a question, sir?

**Robinson:** Yes, sir.

**Fish:** We sometimes interpret and apply code that is very prescriptive, has an objective quality. And other sections of the code to me seem to have a more subjective quality where we're required to balance a number of factors. This section about on balance, proposed lots will have dimensions

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consistent with the purpose of the section. Would you agree that that's more of a subjective standard and that we are, in effect, called upon to do the balancing?

**Robinson:** I would agree it's subjective. And without waiving any rights, Commissioner Fish, that's why we argued in a letter that is part of the record before the hearings officer that that is among four or five sections of this code that may not be applied by the city. So, what I was going to say -- let me finish answering your question this way. I was going to say, if you determined to apply all these sections, we think the hearings officer's decision should be upheld. He correctly applied the law, and the evidence supports his application of the law. But I also agree with you that these standards, many of them are objective. And I did not bring my May 27th --

**Fish:** Objective or subjective?

**Robinson:** I agree with you that they are subjective. They are not clear and objective, they require the exercise of discretion. I didn't bring my May 27th letter up to the podium with me, but it's in the record. What we've said is there's a needed housing statute in the state of Oregon, it's 197-303-1, it says that all needed housing includes attached and detached single family dwellings. So this application is one for needed housing. It goes on to say, in ORS 197307 sub 4 that the city may adopt and apply only clear and objective standards to needed housing. Now, the needed housing statute -- just a bit of an editorial -- is a sleeper in this state. Many cities are aware of it for the first time in an appeal, but I think it's very clear that phrases like on balance and compatibility are subjective, and the city should not apply them. So my argument to you is the same one I made to the hearings officer. On the one hand, if you apply them, you can find that the standards are met, and you should approve the application. Alternatively, we think that they shouldn't be applied at all, because they are subjective and state law prohibits the application of subjective approval criteria to a needed housing application such as this.

**Fish:** And ultimately, if that ever got tested, LUBA would have a say on that but the final say might be a court?

**Robinson:** Well, it has been recently tested by LUBA on a case called Parkview Terrance LLC v. City of Grant's Pass. The decision was issued last month. The City of Grant's Pass denied an application that involved needed housing for seven or eight reasons. The petitioner appealed to LUBA, and LUBA reversed the city -- not remanded, but reversed, saying for a multi-family housing -- this is single family, but for that application, which was multi-family housing -- that's needed housing. Under the statute, you cannot apply subjective criteria. Those were the sole basis for the City of Grants Pass's decision, subjective criteria. So, it's possible it could go to the court of appeals, Commissioner Fish, but in my personal opinion -- not to give you legal advice -- my personal opinion is the statute is very clear. And by the way, I was just going to note this -- both the hearings officer on page 13 of his decision in the Woodstock neighborhood association's appeals statement at page two both agree that, for example, compatible is a subjective term. So that to me seems to be the issue everyone is focused on. I think that we meet that, but I also think it's a subjective term that can't be applied to a needed housing application. I apologize for being so long-winded.

**Saltzman:** I'll go ahead and resume the clock.

**Robinson:** Thank you. So based on all of that, we agree with the staff report originally. We agree with the hearings officer's decision. There's nothing in the appeal that contains substantial evidence or legal argument that would, in my opinion, persuade the council to reverse the hearings officer. He did exactly what this council asks him to do, which is to fairly apply the law without regard to how many supporters or how many opponents there are, and he bases it on substantial evidence. So, let me spend the last part of my 15 minutes addressing the statements by those supporting the appeal. Ms. Griffiths said the new houses will be out of scale. Again, the record does not contain any evidence about what those new houses might look like or how high they might be. If it does, I would remind you that otherwise, this -- we have to comply with the R2.5 zone. So whatever houses are built there will be built consistent with the standards of the R2.5 zone. But whether those houses

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are out of scale or consistent with the scale, that's not a criterion for your consideration in this proceeding.

**Fish:** Let me ask you a question. We've had plenty of hearings where the applicant voluntarily meets with the neighborhood to address those kinds of concerns, and ultimately -- as happened recently -- an appeal was withdrawn.

**Robinson:** I was familiar with that one.

**Fish:** So, why in this case has there not been more effective diplomacy at the local level so that we don't have to address issues which, after listening to you now, I'm beginning to see this is more complicated than even I thought coming into the hearing. So, why hasn't -- because we did have testimony from someone saying that there had been virtually no discussion.

**Robinson:** You did, and they were incorrect. Remember that my client is not the owner. My client is listed in the application as the developer. And I hesitate to stray from the record, because I think that it's important that you stay on the record, but I would only say that I disagree with the testimony that said there's been no discussion with folks. I think that is wrong. But I will also say that I agree with you -- even if it's not code requirements, I think that there's an obligation to meet with folks and talk with them. And my understanding is my client has done that. I prefer not to -- I think the rest of it is outside the record. So, Ms. Griffiths also argued that this application is out of character with the neighborhood. What's relevant is -- and I'll just repeat -- if I can find it, I will repeat the criterion. The only relevant criterion that uses the word character is the purpose statement for 33.611, which says that these requirements ensure that the lots are consistent with the desired character of the zone -- the R2.5 zone, not the character of the neighborhood. So, arguments about house style and compatibility with character of the neighborhood or the historic character of the neighborhood are beyond the approval criterion and are not something that the hearings officer considered, nor should he have done so. Ms. Spence read from a letter and had some testimony about the lot sizes. Again, I refer you to the map. If you look at the map, the area around this site is currently zoned R5, but the plan designation is R2.5. That is what this applicant is doing consistent with the comp plan. To the east across 40th Street, is R5 -- there is no R7 zoning. I recognize that she was making perhaps more conceptual argument about the size of the lots. But I just want to be clear that there is no R7 zoning in that area, and on this side of 40th Street, the comp plan calls for it to be R2.5, not R5. Mr. Anuschat -- I apologize if I mispronounce his name -- talked about traffic. Traffic is not a relevant approval criterion for the petition. It is relevant only to the zoning map amendment. The record reflects the TIA that PBOT reviewed and agreed with. Mr. De Freitas testified at the hearings officer hearing and said there were no issues with traffic -- you can find that discussed in the hearings officer decision at pages four and eight. Mr. Szigethy -- and I would not want to try to spell his name either -- talked about the lot sizes. I just repeat the same arguments. Solar access issue is an interesting one to me, and I have three points for that. First of all, regardless of whether you approve this or not, if homes get built there, they can still meet the R2.5 or R5 standards, and they're going to be there, they're going to be of a certain height and mass. Secondly though, the sun rises in the east, traverses on the south horizon, and sets on the west. That's why the staff and hearings officer made the point that the issue with solar access doesn't apply here because the laws are to the north and east of the neighboring homes. If they were on the south side, there might be an issue, but there's not. And lastly, the solar access standards cited in the Woodstock neighborhood association appeals to solar standards -- which I agree with Commissioner Fritz, are non-prescriptive -- but they apply to solar standards for the homes being constructed. They offer no approval criteria with respect to impact on the adjacent dwellings. So there's simply not an issue there that would cause the council to reverse the hearings officer. The seven-foot stonewall on Reedway Street -- the evidence is that that will not be a problem, but I will offer this. That is, when the construction of these houses begins, I would commit -- if my client is involved -- we will go out there and meet with the neighbors and see what we can do about the stone wall. I don't think it's an inappropriate condition, and Mr. De Freitas didn't think it was an issue at the hearings officer

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hearing, but it's something that the neighborhoods have called to our attention and we will commit to meeting on site to see what can be done about it. Ms. Luening testified about solar access, and I think I've addressed that about as well as I can. Ms. Tetreault talked about the preserving the historic character of the neighborhood. Again, that's not a relevant consideration. I appreciate the love they have for their homes and the neighborhood, but what we have to be concerned about is the approval criterion. And the same goes with Mr. Norwitz's testimony about neighborhood livability. It's not an approval criterion for these standards. I appreciate what Ms. Lyons had to say, although I would correct her testimony a bit. She said the lots are smaller than allowed by the R2.5. That's not correct. If you look at the chart on page 11 in the hearings officer's decision, the lots meet the minimum lot size in the R2.5 zone. The only deviation are the very small deviations on lot width for parcels two and three. And as I've said before, home styles are not in the record and they're not an issue for the approval criterion. Mr. Krater -- I appreciated his testimony, especially his comments about [indistinguishable] but issues regarding the structure are again not relevant to the approval criterion. So, I conclude by saying that I probably sound like a broken record. We have to stick with the approval criteria, that's what the hearings officer did. Really the only challenge approval criterion -- the zoning map amendment is off the table. The only thing that's before you is whether you should affirm the hearings officer's decision to approve a three-parcel land addition -- not four as we could have requested, but three so we can preserve the large house. And out of all the approval criterion involved, what it really comes down to is the chapter purpose statement, which requires us to respect the intensity of the zone, which we're doing -- in fact, we're asking for less intensity than we would be allowed -- and that we be compatible with the zone, which we are, which recognizes that you can have varying lot sizes. So, we thank you for your time. We ask you to affirm the hearings officer's decision. If you have questions that you haven't asked us, please do so, and we'd be happy to answer them.

**Saltzman:** Thank you. Questions? Opponents of the appeal or people who support the applicant that wish to testify?

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

**Saltzman:** OK. Then we will now move to a rebuttal of the appellant.

\*\*\*\*\*: Can I ask you a procedural question?

**Saltzman:** Sure.

\*\*\*\*\*: We neglected to ask for a continuance [inaudible] --

**Fish:** What's your basis for a continuance request?

\*\*\*\*\*: I thought procedurally [inaudible] --

**Rees:** Under state law, only a continuance is mandatory at the initial evidentiary hearing, which took place before the hearings officer. The council has the discretion to grant a continuance, but must do so within the confines of 120-day rule, so it's not mandatory at this stage.

**Fish:** We are we are within the 120 days?

**Rees:** I think it's due September 19th. That's the last day.

**Fish:** And we have the option of asking the applicant to waive the 120 days.

**Rees:** You can.

**Saltzman:** OK. Rebuttal of the appellant? Ms. Griffiths, you have five minutes if you wish.

\*\*\*\*\*: [inaudible] -- to talk about solar orientation.

**Saltzman:** Yeah, why don't you come up here.

**Szigethy:** If I'm incorrect and not understanding what was just said by the councilor. But if you stand at the existing house --

**Saltzman:** So you're offering the rebuttal?

\*\*\*\*\*: Could he give his name?

**Szigethy:** Les Szigethy. I'm sorry if I'm jumping ahead here.

**Saltzman:** That's alright. Start the clock. OK.

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**Szigethy:** OK. If you stand at the existing home and face south, under the proposed plan, you will be looking at the wall of one of the houses on the undersized lots. That is fact. If you stand at the existing house, and look west, you will be looking at the wall of the proposed house on the smaller lot. There is no way that anyone can tell me or you or anyone else that the sun will shine through those buildings into that lot. So directly, as was pointed out by the attorney, the sun travels on the south side. The south side of the existing house will be entirely blocked from the sun by the proposed buildings. Whether that is something you can consider or not after listening to this, I don't understand -- but that is a fact.

**Saltzman:** Is there anything you wanted to add?

**Luening:** If you look at the solar access regulations, and the little diagrams that they have in those regulations -- I don't know if that is in the record. You may have to look it up online, there's a little informational sheet -- and somewhere in there, it says something about -- and it's referred to in the staff report that the one sole house on that is facing the north-south street in a development should be wider rather than narrower. And in this case, I believe it's the most narrow of the three proposed lots and would cast significant shade on the home north of that. I think that you should really think about the woman who spoke earlier who lives to the west and down the hill, because she's already been impacted -- she told us in the previous hearing -- by another home that was built, another infill development on that same street that now blocks the morning light from coming into her kitchen. And this additional development will further block eastern light from reaching parts of her home or her yard. And the eastern light is a particularly nice -- you know, it's a particularly an important light for people that live in a climate such as ours in the northwest. So, I would urge you to take the solar access regulations seriously -- to actually study them, to actually look at the photo that I have submitted in my testimony in the last hearing, and resubmitted today with a little better caption. I would also urge you to think about this compatibility question, because I strongly disagree with the attorney's assertion that it's something that you cannot consider and that it only refers to the density of a 2.5 zone. I believe that that the intention of that word compatibility originally was written to refer to the character of a neighborhood, because that's what it says in the comp plan from which the code derives. Are you following me?

**Szigethy:** Can I make one other point?

**Saltzman:** Sure.

**Szigethy:** In regard to the offer by the attorney to do something about the driveway situation there - - the fact of the matter is that lot is seven feet plus above the level of the street. You can do a lot of things with walls, you can take the stone wall down and make it whatever you want, There's still the fact that lot is seven feet above the street. So in the short that this smaller lot will allow, someone going to have to go down at a steep angle blindly onto the sidewalk. Nothing can change that with what we do with the wall. It's admirable to say we will, but it won't. It's very dangerous situation. There's no reason it should be made to exist.

**Luening:** I want to make one more point, because the question that's come up, what would the neighbors prefer? I think that needs to be sorted out. I don't think that there's any one preference. My personal preference would be to leave the property as is. To sell it to someone who would love to create a beautiful place out of what's there. You know, there are many possibilities. There's more than just two possibilities for redevelopment and lot division. For example, you can make that existing home into a duplex or a triplex. You could have an ADU that did not tower over the adjoining properties. Many possibilities. We would love to discuss that with the developer and with the property owner. Thank you.

**Saltzman:** Thank you. OK. Now, we're at the point of the council discussion.

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

**Saltzman:** I'm sorry, your time is up. Sorry. So, we're now at council discussion.

**Fish:** Dan, I'm inclined to make a motion to continue the hearing for a couple of reasons. There are some legal issues here that I'm less clear about right now than I was when I came in to this

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proceeding. I'm also concerned about a decision of this significance being made by a bare quorum of the council. We typically handle venues proceedings with all five members of council here. We benefit immeasurably from the discussion that comes from the mayor, Commissioner Fritz, and all the commissioners engaged. And because there's a legal question that has been raised about the standard of review, and it's a novel question, which in my experience has not been raised before about what state law does or does not prescribe here -- and because I think that I would benefit from having a full panel decide this question, and also because there's a little additional factual issues that I will be talking to council about in terms of the follow-up memo. I'm going to propose that we set this over to a time certain when the mayor is back. And as part of my proposal, I guess that I would request that we solicit from the applicant voluntary waiver of the 120-day requirement so that we operate within the framework.

**Rees:** I would think that would be a mandatory requirement.

**Fish:** Pardon me?

**Rees:** It would be mandatory that you receive that in order to do the continuance.

**Fish:** Let me put it this way. I have to vote right now I am not prepared to affirm the hearing officer's recommendation until I've had a chance to do some additional work. So it's in the hands of the applicant, but my preference is to do this in a voluntary way.

**Saltzman:** And I'm sorry, where are we at the 120-day clock?

**Rees:** The 120 days expires September 19th.

**Fish:** I don't know when the mayor -- Karla, when is the mayor due back?

**Moore-Love:** He's back next Wednesday, but Commissioner Novick is gone. We don't have a full council until October 1st.

**Fish:** In light of the fact that we've had a preview that there could be legal issues that we litigate until my son graduates from college, and he's about -- he just started fifth grade yesterday, I would ask this proceeding be continued to a time certain for the first week in October when we have a full complement of the council, and also that the applicant agree to an extension of the 120-day clock.

**Saltzman:** OK. That has been the suggestion. Does the applicant wish to weigh in on the question?

**Robinson:** Mike Robinson. I appreciate what councilor Fish had to say, but we're not going to extend the clock. It ends now on September 19th.

**Saltzman:** OK, thank you.

**Novick:** Mr. President, can I ask a question of Commissioner Fish? Would you feel better if we had a postponement simply until next week? Although I couldn't be here, but two other members of the council could, and you could have a further opportunity to discuss the legal issues with the city attorney.

**Fish:** Yeah, you know, the mayor in a prior hearing expressed some concerns that he had generally with this area of the law. Commissioner Fritz is the commissioner in charge. It's by tradition the commissioner in charge has a voice in our deliberations. We obviously all have to come to our own conclusions, but -- and I would say yes, Steve, with no disrespect to your participation --

**Novick:** None taken.

**Fish:** And recognizing that you have a long-scheduled honeymoon -- I would say that's a preference. But I've also made it clear that I'm not prepared to affirm the hearing officer's decision if I don't have the additional time to do my own due diligence. So, either way -- but I think that would be a good compromise.

**Saltzman:** What does the next week look like for the full council -- or four-fifths of the council, I should say.

**Moore-Love:** The morning session we have nothing, so 9:30 time certain would work.

**Saltzman:** On Wednesday morning?

**Moore-Love:** September 10th, 9:30 a.m.

**Saltzman:** Is that OK with The BDS staff? Hold on a second. Attorney, do you want to weigh in on this? And then we'll allow Mr. Robinson.

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**Rees:** Yes, briefly. Just have the council keep in mind that whatever decision you come to, it will likely require revised findings which would have to be completed and adopted prior to the expiration of the 120-day clock to prevent a mandamus action.

**Fish:** A mandamus action meaning going to court to force us to act?

**Rees:** Yes.

**Fish:** What's the effect of not acting within 120 days? Is the underlying action deemed affirmed or denied or neither?

**Rees:** If we go to court -- and feel free to correct me if I am wrong -- the court can order us to approve the application.

**Fish:** Oh. We're not trying to create a job opportunity unnecessarily for lawyers, but it has been my experience -- I will say to the applicant and his able advisor -- that these things are always best done in a collegial sense of give and take. And when the council -- and particularly council members are willing to spend the time to be thoughtful about this -- say that they need additional time to render a thoughtful decision -- it's unprecedented in my experience to have someone not agree to a waiver of the 120 days. That is your privilege, but it would be the first time in my memory that has been an issue in these proceedings.

**Saltzman:** OK, I'm inclined to grant the continuance but I'm going to give Mr. Robinson 30 seconds to opine on that.

**Robinson:** Thank you, Commissioner Saltzman. I'm just curious, what is it that you are doing? Are you continuing -- you've closed the hearing, are you reopening it and continuing that to -- what was the date, September 10th? Or are you closing the hearing and coming back to deliberate on the 10th? Because I am not here on the 10th, so my client won't be represented.

**Fish:** You have a bit of a Hobson's choice here, sir. We have asked your client if they would extend the clock as a courtesy of the council -- which is taking very seriously the legal arguments you made, and wants to engage them. And you've done a fine job representing your client to this day.

**Robinson:** Just until to the last point there.

**Fish:** No, you've done a very fine job representing your client's interest to this point. All I can tell you is it would be unprecedented for someone in your situation not to give the council the courtesy of an extension.

**Robinson:** I wish that I could do that, I'm not prepared to do that now. But I appreciate your point of view, and I'm -- you know, I agree with you about collegiality. My only question was to ask what you're doing. I'm already committed to things on the 10th of September -- what time was it?

**Saltzman:** 9:30 in the morning.

**Robinson:** Yeah, I apologize. So perhaps I can make other arrangements for representation that morning. I guess I would say -- I think that you can -- I will only say that I think that you can close the hearing, close the record, and still do the due diligence that you believe is necessary. Thank you for your time.

**Saltzman:** OK, thanks. I'm going to go ahead and continue the hearing and keep the record open until 9:30, September 10. And that will allow us hopefully to reach a deliberation with four fifths of the council.

**Rees:** I'm sorry to have to clarify. This is an on the record hearing, so the record actually has been closed the entire hearing. So I want to make it clear the record is actually closed. Yes?

**Saltzman:** OK. Yes, the record is closed. So we're just continuing the deliberations until September 10th at 9:30 and council will deliberate with four fifths of its body and reach a decision.

**Rees:** Then I suppose we need clarifications on that.

**Saltzman:** To continue our deliberations until the 10th. OK. We'll have the option of asking staff or you for additional legal interpretations, but no additional testimony.

**Rees:** I think that actually probably would be a problem. I think that you probably would need to grant equal time.

**Saltzman:** OK. Equal time to Woodstock neighborhood association and to the applicant?

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**Rees:** It seems like there is two issues here. One is a legal interpretation, and I'm prepared to discuss that as needed with Commissioner Fish. I don't think that requires, in fact, generally don't give legal advice to council on the record because that waives our attorney-client privilege. The second seems to be that Commissioner Fish, you had wanted to have a greater participation by council, and that does not require testimony. Now, if the parties want to testify and you want to allow them, you can do that. I'm just trying to make it really clear that we need to grant equal time if they are going to testify.

**Robinson:** May I make a suggestion to you?

**Saltzman:** Yes.

**Robinson:** And I am responding -- is that allowed? OK. So, here's the circumstances under which the applicant would extend the clock. I'm trying to think how to do this. If the council's preference was to have more than a bare quorum -- at least four or five members -- that sounds like that would take the council into October. So if you -- here's my concern. I'm happy to extend the clock -- I'm not extending anything right now -- I'd be happy to talk with my client, and if he agrees, offer an extension of the clock if it's for purposes of allowing you to close the hearing. No more testimony by anyone, and then deliberate on a date certain that's further out than the current end of the 120-day period. My concern -- since you've been so candid about your views -- my candid view is as an applicant, I have nothing to gain. Even though the record is closed, the reality is you've got a lot of out of record testimony today. And that's just going to continue, and you get more people. It really serves no interest to continue the hearing. So, if you need time to gather more members of the council, I can talk to my client about that. If, on the other hand, you wanted to keep the hearing open, I might agree to that and extend the clock, but I would want final written argument so that -- we bear the burden of proof. And your process for appeals is a little unique. They get to go first, they get to go last. So, in return for doing final written argument where we've heard everything -- perhaps a new legal position, all the argument -- then we could extend the clock. So perhaps, I could talk -- for now, do what you feel like you need to do, but you've heard what I would -- under the circumstances -- where I would be coming from for recommending this to my client.

**Fish:** Just for my benefit -- when you say you want to submit the final legal argument --

**Robinson:** Written argument.

**Fish:** Witten argument. And you would do that when?

**Robinson:** Well, so I have two thoughts. If you want to continue, to close the hearing -- as Linly said, you closed the record at the conclusion of the hearings officer proceeding. If you want to continue the hearing for purposes of getting a date where all five of the members can be here, I can talk to my client about that, but that would mean nobody gets to come up and testify again. Your rules probably -- may I ask your counsel a question?

**Saltzman:** Yes.

**Robinson:** Do your rules allow council members to ask people questions as long as they stay on the record after the hearing is closed?

**Rees:** The code doesn't specify whether that's permitted or not.

**Fish:** If we don't take any more testimony and we gave both sides the chance to submit legal arguments --

**Robinson:** I apologize -- please continue, I'm sorry.

**Fish:** We have in the past allowed submissions of final statements, but we extended the courtesy to both sides so that it's even handed. Then it's a question just of the council deliberation.

**Robinson:** I apologize. I'm probably not being very helpful. State law is -- and Linly and I have a good faith disagreement about what state law provides -- state law provides the applicant with the right to make final written argument after the record is closed to all other parties. And so, if you wanted -- I guess I have two thoughts -- without trying to make this too complicated because --

**Fish:** It's getting very close to becoming overly complicated. And --

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**Robinson:** It's probably already crossed the line. May I make a suggestion? Why don't you just consider whatever motion you have before you, and in the meantime, I will talk with your city attorney and perhaps we can come up with something.

**Fish:** With the understanding that it is not my intention to seek more testimony next week, Mr. President. It is to have the deliberations, which includes whatever the will of the council is going forward and how they address this case.

**Rees:** So, if council isn't interested in more testimony, I'm hearing Mr. Robinson say that he would consider talking to his client about an extension that would simply allow the continuation of the deliberations. So you don't have to do it today with three, you could do it with five. And that there would be no further written argument, nothing -- it would just be your deliberations taking place once you have five members. And it sounds like he could probably convince his clients that that was a good idea.

**Fish:** Counsel, what I'm also hearing though is he has to have those conversations. So my sense is it makes more sense to keep next week as a control date, have something that we come back to and discuss. If by then we have an agreement as to how we'll handle the case, we can move forward -- if not, we would begin our deliberations next week. Does that make sense?

**Saltzman:** Yeah. I think that sounds good. So we will continue the deliberations only until Wednesday, 9:30, September 10th and that's where we will end. And if we hear from them -- let me get this right -- if we hear from the applicant in the meantime that they're willing to wait until there's a full council, we will make a decision at that time next Wednesday. OK, so we're continued until 9:30 on September 10th. And we stand adjourned.

At 4:37 p.m., Council adjourned.