



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **11TH DAY OF FEBRUARY, 2004** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Leonard, Saltzman and Sten, 5.

Commissioner Leonard arrived at 9:33 a.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Senior Deputy City Attorney; and Officer Curtis Chinn, Sergeant at Arms.

Items No. 116 and 117 were pulled for discussion and, on a Y-5 roll call, the balance of the Consent Agenda was adopted.

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<b>100</b> Request of Mark Jackson, REAP, Inc. to address Council regarding a mentoring program (Communication)	<b>PLACED ON FILE</b>
<b>101</b> Request of Todd J. Kurylowicz to address Council to raise social awareness (Communication)	<b>PLACED ON FILE</b>
<b>102</b> Request of Glenn Warren to address Council regarding lip service of democracy (Communication)	<b>PLACED ON FILE</b>
<b>103</b> Request of Charles E. Long to address Council regarding 25 critical Community Policing issues to resolve this year (Communication)	<b>PLACED ON FILE</b>
<b>TIME CERTAINS</b>	
<b>*104</b> <b>TIME CERTAIN: 9:30 AM</b> – Approve funding recommendations for child abuse and neglect programs made by Children’s Investment Fund Allocation Committee (Ordinance introduced by Commissioner Saltzman)  (Y-5)	<b>178187</b>
<b>*105</b> <b>TIME CERTAIN: 10:00 AM</b> – Amend the vacation of NE 81 <sup>st</sup> Avenue/East 81 <sup>st</sup> Street (Ordinance introduced by Mayor Katz and Commissioner Francesconi; amend Ordinance No. 47140)  (Y-5)	<b>178188</b>

**February 11, 2004**

<b>CONSENT AGENDA – NO DISCUSSION</b>		
<b>106</b>	Accept bid of Stacy & Witbeck, Inc. for the N.W. CBD Phase 4, Unit 2, NW Couch Sewer Reconstruction for the estimated amount of \$1,120,088 (Purchasing Report – Bid No. 102667)  (Y-5)	<b>ACCEPTED PREPARE CONTRACT</b>
<b>107</b>	Vacate a certain portion of SE Main Street west of SE 26th Avenue (Ordinance by Order of Council; VAC-10012)	<b>PASSED TO SECOND READING FEBRUARY 18, 2004 AT 9:30 AM</b>
<b>Mayor Vera Katz</b>		
<b>108</b>	Re-appoint Richard Allan to the Adjustment Committee for a term to expire June 30, 2005 (Report)  (Y-5)	<b>CONFIRMED</b>
<b>109</b>	Confirm appointment of Diana Kimbrough and James Paulson to the Workforce Investment Board for a term to expire December 31, 2006 (Report)  (Y-5)	<b>CONFIRMED</b>
<b>*110</b>	Pay claim of Barbara Cazden Living Trust (Ordinance)  (Y-5)	<b>178174</b>
<b>*111</b>	Pay claim of Tim Palmer (Ordinance)  (Y-5)	<b>178175</b>
<b>*112</b>	Authorize Intergovernmental Agreement between Multnomah County and the Bureau of General Services for maintenance and repair of electronic equipment at Justice Center and other City Facilities and Precincts (Ordinance)  (Y-5)	<b>178176</b>
<b>*113</b>	Authorize a contract and provide for payment to furnish replacement vehicles (Ordinance)  (Y-5)	<b>178177</b>
<b>*114</b>	Authorize addendum to contract with Fisher & Phillips LLP for outside counsel assistance (Ordinance; amend Contract No. 35076)  (Y-5)	<b>178178</b>
<b>*115</b>	Create a new classification of Assistant Emergency Communications Operations Manager and establish a compensation rate for this classification (Ordinance)  (Y-5)	<b>178179</b>

**February 11, 2004**

<p><b>*116</b> Change the salary range of the Nonrepresented classification of Parking Collection Technician (Ordinance)</p>	<p align="center"><b>CONTINUED TO FEBRUARY 18, 2004 AT 9:30 AM</b></p>
<p align="center"><b>Commissioner Jim Francesconi</b></p>	
<p><b>*117</b> Authorize contract with Socialdata America to conduct TravelSmart marketing program to reduce car trips and improve the efficiency of the transportation infrastructure in the Interstate Corridor in North and Northeast Portland (Ordinance)</p>	<p align="center"><b>REFERRED TO COMMISSIONER OF PUBLIC UTILITIES</b></p>
<p><b>*118</b> Apply for a \$80,000 grant from the Recreational Trails Program through Oregon State Parks to reconstruct a two mile segment of the Springwater Corridor trail (Ordinance)  (Y-5)</p>	<p align="center"><b>178180</b></p>
<p align="center"><b>Commissioner Randy Leonard</b></p>	
<p><b>*119</b> Amend contracts with Clair Company and SW Consulting Engineering to provide additional one and two family residential plan reviews for structural engineering issues and to increase the compensation (Ordinance; amend Contract Nos. 34364 and 34363)  (Y-5)</p>	<p align="center"><b>178181</b></p>
<p align="center"><b>Commissioner Dan Saltzman</b></p>	
<p><b>*120</b> Accept easements granted for the South Airport Basin Sewer Project and authorize payment (Ordinance)  (Y-5)</p>	<p align="center"><b>178182</b></p>
<p><b>*121</b> Authorize Construction Permit and Right of Entry from the Port of Portland for the Mocks Crest Revegetation and Wildfire Management Project (Ordinance)  (Y-5)</p>	<p align="center"><b>178183</b></p>
<p><b>*122</b> Authorize property easement for Larson Conduit Intertie facility (Ordinance)  (Y-5)</p>	<p align="center"><b>178184</b></p>
<p align="center"><b>Commissioner Erik Sten</b></p>	
<p><b>*123</b> Increase agreement with JOIN by \$106,000 for the Homeless Outreach Program and provide for payment (Ordinance; amend Contract No. 34926)  (Y-5)</p>	<p align="center"><b>178185</b></p>

February 11, 2004

<p style="text-align: center;"><b>City Auditor Gary Blackmer</b></p> <p><b>*124</b> Assess property for system development charge contracts (Ordinance; Z0746, T0077, K0062, T0078, K0063) (Y-5)</p>	<p style="text-align: center;"><b>178186</b></p>
<p><b>REGULAR AGENDA</b></p>	
<p><b>125</b> Accept proposal from Genuine Parts Co., dba NAPA Auto Parts for Stores and Warehouse Business and Operations Services for Portland Parks and Recreation (Purchasing Report – RFP No. 102199) <b>Motion to accept the proposal:</b> Moved by Commissioner Leonard and seconded by Commissioner Saltzman. (Y-5)</p>	<p style="text-align: center;"><b>ACCEPTED PREPARE CONTRACT</b></p>
<p><b>Mayor Vera Katz</b></p>	
<p><b>*126</b> Appoint Linda Meng as City Attorney effective February 26, 2004 (Ordinance) (Y-5)</p>	<p style="text-align: center;"><b>178189</b></p>
<p><b>*127</b> Adopt a new Human Resources Administrative Rule to allow the restoration at the rate of 100% of accrued leave used by members of the Fire and Police Disability Retirement and Death Benefit Plan pending the acceptance of a service-connected claim (Ordinance) <b>Motion to amend subsection “a” to add Administrative Rule 6.14 shall be applied to service connected disability claims made on or after July 1, 2002:</b> Moved by Commissioner Leonard and seconded by Commissioner Sten. (Y-5) (Y-5)</p>	<p style="text-align: center;"><b>178190</b> AS AMENDED</p>
<p><b>City Auditor Gary Blackmer</b></p>	
<p><b>128</b> Assess property for sidewalk repair by the Bureau of Maintenance (Hearing; Ordinance; Y1050)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING FEBRUARY 18, 2004 AT 9:30 AM</b></p>

At 11:35 a.m., Council recessed.

**February 11, 2004**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF FEBRUARY, 2004 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Leonard and Saltzman, 4.

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

<p><b>S-129 TIME CERTAIN: 2:00 PM</b> - Establish Time, Place and Manner regulation of establishments that sell and serve alcoholic beverages, adopt implementation guidelines and policies (Ordinance introduced by Commissioner Leonard; Second Reading Agenda 89; adopt Code Chapter 14B.120)</p> <p><b>Motion to accept Exhibits A and B:</b> Moved by Commissioner Leonard and seconded by Commissioner Francesconi and gaveled down by Mayor Katz after no objections.</p>	<p><b>Disposition:</b></p> <p><b>SUBSTITUTE PASSED TO SECOND READING AS AMENDED FEBRUARY 18, 2004 AT 9:30 AM</b></p>
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At 2:44 p.m., Council recessed.

February 12, 2004

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF FEBRUARY, 2004 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Leonard, Saltzman and Sten, 5.

Commissioner Saltzman arrived at 2:06 p.m.

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

<p><b>130 TIME CERTAIN: 2:00 PM</b> - Appeal of the Sunnyside Neighborhood Association against Hearings Officer's decision to approve the application of Martin Treece and Marquis Companies I Inc for a Conditional Use with Adjustments for an assisted living facility at Hawthorne Gardens, 2827 SE Salmon Street (Previous Agenda 1309; LU 03-111111 CU AD)</p> <p><b>Motion to tentatively deny the appeal, modify the Hearings Officer's decision and approve the modified proposal, including the Conditional Use for the building, based on the new design, and approval of the requested Adjustments to building coverage, height and screening for the loading space. The approval is, subject to the conditions of the original approval, except as modified or updated through the hearing process and also subject to conditions requiring the proposal to conform to the applicant's proposed construction materials and lighting:</b> Moved by Commissioner Saltzman and seconded by Commissioner Sten.</p> <p>(Y-4; N-1, Leonard)</p>	<p><b>Disposition:</b></p> <p><b>TENTATIVELY DENY APPEAL AND UPHOLD HEARINGS OFFICER'S DECISION WITH MODIFICATIONS; PREPARE FINDINGS FOR FEBRUARY 25, 2004 AT 2:00 PM TIME CERTAIN</b></p>
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At 4:30 p.m., Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

February 11, 2004

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

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

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

**FEBRUARY 11, 2004 9:30 AM**

**Katz:** Council will come to session. Karla, please call the roll. [ roll call ]

**Katz:** We want to welcome commissioner Sten back, as you all know, he's become a father over the last couple of weeks, and he's back to do the work of the city. We welcome him back. All right. Let's take communications, item 100.

**Item 100.**

**Katz:** All right, mr. Jackson, come on up.

**Mark Jackson:** Good morning, mayor, and council members. Before I start I wanted to ask permission to allow one of our students to speak in the three minutes we have.

\*\*\*\*\*: Ok.

**Jackson:** I'll start with the first minute and a half. My name is mark jackson, I wish you -- you have before you an article from "the Oregonian" dealing with issues with our public education and our program. My name is mark jackson, director of reap, a nonprofit organization whose vision is to empower youth with all resources necessary for a better life. Our focus is mentoring students at the ninth grade level and continue throughout high school. We're here to fulfill a journey that started last november with bob durston of commissioner Sten's office. We discussed the possibility of reap and the city of Portland forming a partnership to bring a fresh and proven approach to serving youth in our city. He welcomed what we had to offer and encourage that we find a way to share this vision with you, mayor Katz. However, he advised that I first speak with all other council members beforehand, from there we went with commissioner Francesconi's office, he was excited about the office and requested a formal proposal and resumes. From there we continued our journey with jeff of commissioner Saltzman's office, and he also gave some feedback of excitement. Our most encouraging discussion came with commissioner leonard who reinforced our model of seeing kids as partners and not projects. We concluded meeting with carol turner, who welcomed a fresh approach to serving young people. Having met with so many wonderful people and hearing their feedback, our desire to meet with you increased. I was denied the opportunity to meet with you to share this vision, that's why we're here today.

**Katz:** Thank you. Carol is my education -- the city's education advocate in my office, but i'm glad that you've come back.

**Jackson:** Thank you so much. It is clear you are a portal in our city. I recall in 2000 that jefferson high school you came through the hallways and you grabbed one of my students by the face and you looked him in the eye and said, you can be anything you desire to be in life. It is that same impression that was put in my heart and that same passion I come today as you embrace that child back in the year 2000 that you embrace this program as a potential preferred contractor with the city of Portland to provide mentoring services with our youth in the Portland public schools. Please hear from johnathan starr from Portland public high school.

**Katz:** We're probably going to give you a little extra time. Did you want to speak too? Ok. Grab the mic.

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

**Katz:** Identify yourself for the record.

**February 11, 2004**

**Jonathan Starr:** I'm johnathan starr, from franklin high school, i'm a sophomore. Reap is a real good program, and people have a chance to get help with school work if they need it, and like they get help from not only the mentoring people, but also from other students, and they get a chance to learn different stuff, and we do different service stuff, like pretty soon we're going to be going to help seniors and stuff, and I just think that reap's a good program, and that it can really do people well in life if it's extended and stuff.

**Katz:** Thank you.

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

**Katz:** Grab the mic. Introduce yourself.

**Lee Tran:** I'm lee from franklin high school.

**Katz:** Why did you join the program?

**Tran:** It was for basically for school and home. I have problems at home and stuff, and they're here to help me, and I needed some mentoring in school, and they gave me that. And -- because i'm a low-income student and I didn't really have money to get my own tutor, but they helped me a lot with tutoring and everything.

**Katz:** Thank you. You know what you have to do this summer? You have to read 25 books. That's your punishment from coming here if you call that a punishment. If you were in my office i'd ask you to do some other things, but I didn't want to take time -- at least 25 books this summer. Will you monitor that, mr. Jackson?

**Jackson:** I will.

**Katz:** I'm not asking you to read 25 books. But I want them to read 25 books. Thank you.

**Jackson:** Thank you so much.

**Katz:** Good luck. All right. Item 101.

**Item 101.**

**Todd kurylowicz:** My name is todd kurylowicz, resident of northeast Portland. We're here today to press this issue that we've been bringing forth the past few weeks, and basically we're putting the mayor on trial in the court of public opinion. To show your competence as a police commissioner in handling these situations. Thank you for the presentation before. And thank you for responding, because that shows that you can respond to these situations in a public forum. We're going to watch a video that's going to depict some police brutality. The message is clear that you're scaring people away from going to demonstrations with these police tactics.

**\*\*\*\*\*:** There should be some communication right now, talking to the people instead of force immediately. They're saying "peaceful protest." there's no reason for this to escalate.

**\*\*\*\*\*:** Stop pushing me. Stop pushing me. Let go of me.

**\*\*\*\*\*:** I know you're just doing your job and really you don't want to do this. Think about it. We're not doing anything wrong: Thank you for your support.

**\*\*\*\*\*:** Stop pushing her: Officer, stop it: Stop pushing: Officer, enough of that:

**\*\*\*\*\*:** He said, "spray them." [indistinguishable yelling]

**Kurylowicz:** Glen will be coming up to finish the video and have a few comments for you. We'd like a response back.

**Katz:** Excuse me. There's a lawsuit. I will not comment.

**Kurylowicz:** There's a lawsuit that -- that does not affect us. I'm talking about how this is --

**Katz:** I understand. Thank you.

**Kurylowicz:** You can comment. You're a human being.

**Moore:** 102.

**Item 102.**

**Glenn Warren:** My name is glenn, i'm a Portland resident, we're going to watch the video.

**Katz:** Ok. [indistinguishable yelling]

**February 11, 2004**

\*\*\*\*\*: This is how riots start. Who's pushing who?

\*\*\*\*\*: I can't breathe: [crying]

**Warren:** Well, as you can see, that -- those tactics brought on a lot of chaos and pain and suffering to people who were obviously peaceful. And actually, I know mr. Leonard and mayor, you can comment on some of this, because it's become a great issue, the euphemism of free speech zone is becoming a growing concern. And no one from up here is talking to the community about this. Your campaign before the -- before you were in office you were saying the community guy, and as you know, with the cheney protest, people were herded into a pen area with barbed wire and chain link fence. Nothing -- you ran on this campaign saying that you're going to be out there with the community. I don't hear it, I don't see it. Any comments, anybody? Well, we can continue to do it this way. We prefer to talk, because we don't want people to get hurt.

**Katz:** Thank you.

**Warren:** You have political demonstrations coming up in the future.

**Katz:** Thank you.

**Item 103.**

**Katz:** Is charles here? Ok. Let's get to consent calendar. Any items to be removed off the consent calendar?

**Francesconi:** Mayor, I have a request just now to have 116 pulled. Let's refer the union apparently has some issue over the pay. Let's refer back to my office if ok for one week so that I can at least look into the issue.

**Katz:** Ok. Any objections?

**Francesconi:** Just for a week. Let's hold it over. Not pull it back, but hold it over for a week.

**Katz:** All right.

**Moore:** We need to read it. But we also have 117 to be pulled too.

**Katz:** Ok. Hold on. 116, 117. Any others? Ok. Let's vote on the consent agenda.

**Francesconi:** Aye. **Leonard:** Aye. **Saltzman:** Aye. **Sten:** Aye.

**Katz:** Mayor votes aye. 116.

**Item 116.**

**Moore:** Change the salary range of nonrepresented classification of parking collection technician.

**Katz:** All right. Any objections to taking this back for a week? Hearing none, so ordered. 117.

**Item 117.**

**Katz:** Who pulled this off?

**Francesconi:** It looks like I did. I know what the issue is. There's two minor errors in the ordinance that have to be fixed. This is a great program, we just have to change two minor errors. So this should be referred back.

**Katz:** All right. It will be referred back to the commissioner's office. Hearing no objections, so ordered. [gavel pounded] all right. Item 104 time certain.

**Item 104.**

**Saltzman:** Thank you, madam mayor and members of the council. As you all recall, the city proposed and the voters approved a local option property tax levy november 5 of 2002 to create -- to help fund programs, to help children in program. It created the Portland children's investment fund, and the investment fund began actual operation in june of 2002 -- june of 2003, and today we're here to review and seek your approval for contracts for the second round of investments that have been made so far under the children's investment fund. And this round deals with child abuse prevention and intervention. Just to briefly recap what we've done to date since june of last year, we have invested \$3.2 million in early childhood programs, and \$755,000 in child abuse prevention and intervention programs, and those services began in october of last year. These investments will

February 11, 2004

fund services to more than 2400 children and 475 families each year. In the effects few weeks per our agreement was each one of these grantees, we receive quarterly performance reports, and we will begin receiving those report next week. To illustrate the seriousness with which we have undertaken our fiscal responsibility, we've established a rule that no checks will be distributed to grantees prior to receipt and approval of these reports. Andy Olson is going to give us -- do you have that on the screen? The midyear report? We have highlights from a midyear report which should be on your screen. As you'll see from the midyear report, so far children's investment fund dollars have funded 76 positions at an average salary of approximately \$34,500, which is approximately 80% of the median income for a Portland family of four. The grantees administrative rates have been kept under 6%. The children's investment fund administrative costs have been kept under 5%, which was part of the ballot measure itself, language in the ballot measure. Hundreds of volunteer hours were contributed by members of the allocation committee, evaluation subcommittee, and proposal review committees. We've gathered extensive community input in round one we had a meeting that drew 175 attendees for the round two investment that's we're approving today, we drew a crowd of 70 attendees, and they gave us important input on community needs and programs that can be cost effectively met with children's investment fund dollars. With the help from the city's bureau of housing and community development, the children's investment fund staff have negotiate and are managing right now 25 grant agreements. Part of our other commitment was to establish relationships with -- relationships with others to help leverage fund dollars. So far the children's investment fund has established relationships with the foundation community, including the northwest health foundation, the meier trust, hanna anderson foundation, and social partners fund. As andy Olson will go into more detail, we've made the allocation committee has made recommendations to you, finishing off our commitment to fund programs that focus on child abuse prevention and intervention. And before he highlights those requests in front of us today, i'd -- he'll talk about the county commission, who has always signed off on these investments, Multnomah county commission, but I want to thank all of the people who have helped get us to this date. We've had a lot of extensive citizen involvement in this round two, first of all we had 32 service providers apply for funds in round two for approximately, we had about \$8 million worth of investment requests for about \$1.2 million worth of money that we actually had. The work these service providers do is both sobering and inspiring. Next i'd like to thank the volunteer proposal reviewers, who spent hundreds of hours reviewing and scoring proposals, and finally i'd like to thank the fellow allocation committee members. In addition to myself, it includes Multnomah county commissioner lisa naito, dr. Samuel henry of the graduate school of education at Portland state university, ron belts, vice-president of dreyfuss property group and also a member of the Portland business alliance, and then finally, dr. David willis, a developmental behavioral pediatrician who is the city of Portland's citizen representative on the allocation committee. All of them have spent a great deal of time working in the community on these issues and of particular note, dr. Henry and dr. Willis also cochair our own evaluation subcommittee. So today i've asked andy Olson to make -- he has a helper, to review the process leading up to the allocation committee recommendations on child abuse prevention and intervention and review each recommendation itself. Andy?

**Andy Olshin, Co-Director, Children's Investment Fund:** Thank you, dan. Madam mayor, commissioners.

**Saltzman:** We also have the attachment in the back that lists the investments we're being asked to approve today.

**Olshin:** And i'll bounce it up on the screen in a bit. At about 6:00 this morning I woke to the sound of my 3-year-old boy solomon half singing, half yelling, daddy, mommy, come wake me up. I know erik will -- commissioner Sten will relate to this. Miraculously he didn't wake up my wife or

**February 11, 2004**

my 9-month-old son. When I started this job, about a month after benjamin was born, I realized what an honor it was to do this job. I just wanted to say for the children of the city of Portland, looking back at what we've accomplished so far with 2400 children receiving services, I just feel proud to be a part of this. And I wanted to say thank you on the record for that. During the fall of 2003, the staff, which at the time was make meg and i, and we have a team member, much stronger -- did you want to say something about that? Ok. We facilitate add number of round table discussions on child abuse prevention and intervention programs to help define the issues and plan a community gathering around our round two of investments. We discussed the best practices in the field, both nationally and in Portland, the characteristics of effective programs, the concept of cost effectiveness, gaps in the current services, and the criteria for evaluating proposals. The following individuals were involved. Rob abrams and david camp with the Oregon department of human services, lisa hansel, rita golden, emmy sloan, a children's advocate, shannon campion with stanford children, diane, a professor at p.s.u. with the children's welfare partnership, wendy, with the Multnomah county commission on children and families, kevin doweling with cares northwest, jeff cogan, charlotte, cynthia thompson with the children's trust fund, Multnomah county district attorney, and helen smith. As a direct result of those early meetings, a community gathering was held on november 13 where we had approximately 70 attendees participating. They basically created a list of community gaps in three areas. Primary, secondary, and tertiary child abuse prevention and intervention. For each area they created a list of programs and service that's should address those gaps. And a summary of this work was distributed to all the attendees which is basically attached in the request for investment document which I have if anybody would like to review. The next thing that happened was staff drafted "for investment document just similar to an r.f.p., because it's a grant, we can't call it the same thing according to the city attorney's office. So we put that document and circulated out to community for comment, something we felt this was the second time to do this, we wanted input from the providers on the request for investment document before publishing it. The r.f.i. was published december 12 with an original due date of january 8, due to the weather we extended the deadline until monday, the 12 at 4:00 p.m. After submitting publishing it we received 32 proposals on january 12. That was actually fewer than we did in the first round. We received 47 proposals in the first round, but this was a pool of approximately \$800,000 a year and we received 32 proposals which was quite a significant amount, almost \$8 million worth of requests. On january 13, a day after we received the proposals, we distributed all the proposals to the allocation committee so they could have as much time as possible to review them we also distributed them to two review committees. An academic committee that consisted of peggy from ohsu, mark edy with the Oregon social learning center, harold riggs, thomas, and gary withers with the children's institute. And dr. David willis actually also participated but he didn't score proposals. The community committee that was put together included cynthia wells, the director of early head start of Portland, shannon with stanford children, joe, the executive director of p.o.i.c., Portland opportunity industrialization center, scott, a senior vice-president at gunderson, inc., andrea johnson, the mom of four former head start students, victor merced, who is with the meier trust, and pam hessler with southeast works. So it was a combination of foundation, business, consumer, and nonprofit either administrators or representatives. These committees spent close to 400 hours reviewing and scoring the proposals. The results of this effort I will pop up on the screen right now. This is the final ranking. At the result of the allocation committee, i'll just lead up to that real fast. On january 26, the allocation committee met to focus on round 2 investments. Commissioner Saltzman reviewed some state of Oregon statistics about the number of cases of child abuse neglect statewide, and the disproportionately higher occurrences among african-americans, hispanics, and native americans. Staff discussed the request for investment process to date that we just went through, and then we presented a larger list of which I have available for you

**February 11, 2004**

also if you'd like, of all the proposals that came in for requests. The committee decided its initial decision strategy to be as follows. There were 32 proposals. We dropped the bottom 16 proposals, leaving the other 16 for discussion. Then they reviewed the top 16 proposals one by one to see if they merited preliminary approval for funding, keeping in mind the need to fund programs that addressed certain populations with disproportionately high occurrence of child abuse and neglect. The same populations that commissioner Saltzman noted at the beginning of the meeting. The committee discussed the proposals for about an hour and made some preliminary funding decisions, though no votes were taken at that time. Preliminary decisions included recommendations to fund the top four proposals, the first four, including the tualatin valley center, the met a mayor if a sis project. The support team and the big brother, big sisters project. Those four totalled approximately \$910,000 of the -- what turns out to be 18 months worth of contract period, instead of \$800,000 over a year, we determined it for management purposes it made sense to do it \$1.2 million over the 18-month period. So the next thing that happened is the committee placed seven other proposals of the top 16 on a list for consideration. Those proposals then were discussed and the committee invited some representatives from a couple of those different organizations to come up and provide some testimony, and the result is the spreadsheet you see on your screen right now. The preliminary recommendations from the committee include the organizations that you've got listed, and the programs that are up there, and I will go briefly into some information about each of the programs that you've got on your list. But I thought before I did that i'd see if anybody had any questions so far.

**Leonard:** I do. I'm assuming tualatin valley centers program operation that we're funding are located within the boundaries of Portland?

**Olshin:** Yes. The ballot as well as the city attorney has given preliminary opinion that only services for the citizens of Portland can be funded through the grant.

**Leonard:** I don't know if we're going to get to the second page, but I noted the christie school, located in clackamas county, has had some funding.

**Olshin:** The christie school, the program that was funded in round one is actually the receiving center, which is the is in the city of Portland. Christie school did not receive funding in the second round.

**Leonard:** Ok. So this isn't for the school located out in west linn.

**Olshin:** No.

**Leonard:** Ok. Thank you.

**Olshin:** The interesting thing, a lot of these programs are regional and they provide services in a lot of different parts -- the providers are very well aware of the parameters of the funding and that it only goes for the citizens of the city of Portland. Starting from the top down, just to give you a brief overview of the programs that we funded, the tualatin valley family and community alliance project is a secondary prevention service for families at high-risk of abuse or neglect. It is part of the Multnomah county community safety net, which is a very important element of what we were looking at when the proposal review committees as well as the allocation committee was discussing it. Does it fill a gap in the services that are needed in our community, is it part of a bigger system. So it serves families referred to the child abuse reporting hotline, but who are not involved in child protective services. So it's kind of a very on the cusp of needing intervention group of families, and in a lot of ways it prevents, by providing services at that time it prevents them from falling into the highest need, highest risk category, which from a cost perspective, is a lot more expensive. Services include helping families create family action plans to meet their self identified needs to increase family stability and functioning. If you -- if they're at a point where they're self identifying, that's a very good place to help folks. And the expanded program will serve an additional 120 families. The next project we funded is the metamorphosis project, which expands

**February 11, 2004**

services. Over the majority of these children have addictions, abuse issues and mental health issues, many of whom at the result of child abuse or other kinds of abuse. The program serves approximately 975 youth through an expanded outreach and intensive services and treatment for substance abuse and mental health, service that's have not been part of this before. Interesting to note that the robert wood johnson program foundation was the starting point for this project that's been going on for a couple years and has been very successful, and we are basically entering in into a partnership with robert wood johnson, northwest foundation and the collins foundation to help this program continue as well as get some more depth. The second -- the third project on the list is the tualatin valley youth support team project, which expands the existing adolescent day treatment center through creating what they call a youth support team, which is a multisystemic therapy model for youth. And it's a supported classroom, and it works in north, northeast, and southeast. The expanded project will assist school and community partners to identify and refer youth who are at risk of being abused or have a history of child abuse. The youth support team will develop a plan of care for each child, and provide assessment, consultation, intensive case management, care coordination, direct therapy interventions, and at -- at the nickerson center and we'll tin c2-4ey center at lane middle school. Another important point, the middle school population is something we've started discussing for our round three, is a very underserved segment of the population. The next project is the big brothers and big sisters project hope, which is a new program locally, but not nationally. There are other projects hope in the other parts of the country. The program pairs mentors with youth ages 10-18 in the foster care system, and provides some case management coordination for those youth. A certain percentage of the youth that big brothers, big sisters works with now are in the foster care system. This is an attempt to increase that by approximately 120 youth. There are 45 youth in foster care that are already on the waiting list for big brothers/big sisters. Youth would be referred through a collaboration with albertina kerr and the depaul treatment centers. The last project works with the native american population, which is one of the high-risk populations that for a lot of reasons around statistics and research, have not received a proportionate share of these kinds of services, and commissioner Saltzman early on in the meeting that we made these decisions pointed out some issues around the disproportionate amount of child abuse and neglect that occurs in that community. And basically this project would integrate the child abuse prevention intervention into some of the existing center-based health care related programs and focusing on the highest risk groups. It's a combination of primary prevention which will go out to the entire native american community in the city of Portland, which is approximately somewhere in the 14,000 individual numbers, the numbers that we've received from these organizations. And also providing detailed and case management type support through parenting, support advocacy, prenatal care, parenting classes, using a curriculum called positive indian parenting, which is an adaptation of another research-based curriculum. And their secondary and tertiary part of the program focuses again on teen families, which are parents of -- teen parents, and families experiencing domestic violence. That concludes the process from here basically we take your wisdom and then move into a contract negotiation process with the grantees.

**Saltzman:** I just wanted to add, you have a column that talks about the total amount from the children's investment fund for each one of these grantees, those total amounts are maximums. We are still negotiating, we still will be negotiating with these grantees to really make sure that we're not paying for things that we don't want to be paying for, and the realm of administrative cost and reimbursibles and things like that. So we intend to keep those -- those are maximums and hopefully we'll negotiate them for fewer dollars.

**Katz:** Questions by the council?

**Leonard:** I guess I have a follow-up to my first question. Are we assured that these agencies that have multiple jurisdictions, they serve, are not backfilling dollars, in other words, do we have some

February 11, 2004

process by which we're assured that the christie school has an intake center in Portland, isn't using dollars at the intake center that they then don't need to fund and then use those back-fill dollars to fund operations outside of the city? Do you ask those questions? Do you get some kind of a sense that we're funding something that otherwise would not be funded?

**Saltzman:** Certainly on that particular project -- that was the christie school, they did apply in round two, they were not accepted, but in the round one early childhood abuse prevention and intervention, they did receive money for the -- their operation of the receiving center. And christie has a contract to operate the receiving center, it's -- the offer relies on program revenues, plus money that we have awarded to them. And then under -- reporting, they are to account for how the dollars are spent. So we have -- we know the dollars we're providing them are being spent on receiving center operations.

**Leonard:** I understand that. I guess my question is, is that money then -- they might have otherwise spent that they don't spend in Portland that is used to support an operation outside of the city? Are we in essence subsidizing -- do we ask that question?

**Olshin:** The questions we ask are multifold around funding. One of the things we do, we connect up and ask questions of other funders to see what the performance of an organization has been over time with the dollars that that organization gives them. So we do financial due diligence there. As far as whether an organization is borrowing from peter to pay paul, if that's what you're --

**Katz:** Maintenance of effort in what they're currently doing rather than shifting the money somewhere else.

**Olshin:** Ok. We can only focus on what we're investing in, and we can only hold them accountable for what we're contracting with them for.

**Leonard:** Do you understand my point?

**Olshin:** I do fully understand your point.

**Leonard:** It's an important question to ask, that they're not, for instance, when the voters passed in 1998 a measure requiring a certain amount of money from the lottery going to the state park system, there was quite a hue and cry when the legislature defunded general fund dollars because the voters had put it in and it felt like it was just a shift and a backfill of that -- and that violated the intent. I'm not questioning how they spend the money, i'm very familiar with the christie school and the work it does. It's an organization i've always supported. But these are Portland taxpayer dollars and we need to make sure that the money that we're giving them then doesn't relieve some obligation they'd had up to that point that they then shift those dollars to an operation outside of the city. We at least need to acknowledge to them that we know that's a possibility, and that can't be part of what they do in their operation. It needs to at least be addressed.

**Saltzman:** I think we try to address that as best we can. Certainly organizations who provide services in the tri-county or four-county area have a lot of different programs. We're receiving proposals from them only related to services to be provided in the city of Portland. And we're making sure the dollars we give them are in fact spent in the city of Portland on city residents. I think we try to get assurances, but we really can't hold them to something vis-a-vis a program that's in another county. Or service in another county. And how they meet their budgetary obligations, I guess. We do have a backfilling, a no backfilling policy in terms of the maintenance that the mayor is referring to, but looking at an organization's global budget and trying to say, are they somehow taking money and then putting it somewhere else because we gave them funding for a city of Portland program, I guess that's a harder challenge.

**Leonard:** I don't think i'd expect you to actually do that. I would think that you would acknowledge that we are cognizant that's a possibility, and that would not be appropriate.

**Olshin:** I do believe during the processes both -- the community processes and the request for investment as well as the allocation committee meetings that we've had we've made it very clear

February 11, 2004

that these dollars are not to be used to backfill, number 1, number 2, that the dollars are to be used to provide services only to the residents of the city of Portland, and number 3, that we are going to be watching and taking a very careful look at how the funding is looked at. An example of that is, we're looking at the metamorphosis project which is one of the projects we funded in round 2 and looking at their funding streams that they have and how to best manage those funds for the citizens of the city of Portland. If you've got collins foundation, northwest health foundation, robert wood johnson putting efforts -- dollars into a program, then we want to make sure that the dollars that they're putting in and that we're putting in are being leveraged so the program can have as much depth and as much breadth as possible. That's an example of the kind of financial management we're trying to do. It's very difficult to do what you're talking about. We can ask them and try -- when we rank the proposals and put it before the proposal review committees, the issues of cost effectiveness and the issues of fiscal responsibility and organizational capacity, those are some of the criteria we use to ask organizations. What they do after they get the money and after they've made those promises is something we can do our best to check on. I think a lot of organizations are very much squeezed during this funding climate, and there's probably some temptation to do what you're talking about, but we will try to hold them as accountable as we can.

**Francesconi:** The maintenance, the no backfilling may take care of the issues. So I think if they've been providing services to Portland residents before, and then if you give them new money to do that, and then they terminate the prior services to the citizen and move the money outside, that would not be -- that would be wrong. So if your no backfilling provision prevents that from happening, then I think it keeps the letter and the spirit. So maybe looking at that language and making sure it's adequate would be one thing. The mayor raised a -- I would agree with that point that's being made by commissioner leonard. On the second issue, the backfilling, that's a different -- the maintenance of effort, that's a different -- well, perspectively, not retroactively is the way i'm looking at for maintenance of effort, in other words, when the grant runs out, what happens? Is there any requirement to continue these efforts? That would be my version of a maintenance of effort.

**Olshin:** One of the reasons we said the r.f.i. grantee terms at 24 months in the first round and actually 18 months in the second round was so that we would have a chance to do some evaluation of the performance and assess whether they have completed their contractually obligated responsibilities to the city of Portland, and how they have done so. Basically how have they changed lives, that's what this is about. And then we can determine through that process whether we would like to renew them for the either 12-month period after that, 18 months, 24 months, as far as the other funding streams, we're also working with the organizations to try to connect up other funding streams to continue and add more depth so that they're not totally leaning on the funds from us to survive. The concept is nonprofits have three legs -- public, private, and foundation support. And that's part of what we're trying to look at, is how we can work with -- i'm sorry. The mayor is laughing at the name of the --

**Katz:** There are a lot of people who don't understand acronyms. Go ahead.

**Olshin:** I apologize. So we're looking at the three-legged stool that some of these nonprofits work with and trying to help fund things that would be sustainable.

**Saltzman:** The whole point of the investment fund is to invest in expansion of capacity, not to allow them to stop offering some service they're already doing. We're entertaining proposals only dealing with expanding their ability to provide the -- to serve more kids or more families in these three investment areas.

**Katz:** Just to complete this conversation, I hope that you do review just like we're reviewing with the itax how the money has been spent with their resources other than the children's levy and then how they're spending the money on the children's levy, and then keep tracking that to make sure there aren't any shifts. Further questions?

**February 11, 2004**

**Leonard:** I did have one more. Maybe you can help me understand the administrative overhead cost for one program here, it's 10%, the others are 5. I thought we had a limit of 5%. Is that just in the overall --

**Saltzman:** We have a limitation of 5% on our administrative expense. The children's investment fund. For the grantees, the allocation committee, there was never any prohibition necessarily on a grantee's administrative expenses, but the allocation committee has adopted a policy that sets an administrative limit according to the grantee's size, or budget. So for large organizations like tualatin valley center, all four of the other ones, we set a limit of 5% administrative limit of 5%. That's for, what, budgets of \$2.5 million?

**Olshin:** 5 million and up.

**Saltzman:** Organizations with 5 million and up, we set an administrative limit of their grant of 5%. If it was between 2.5 million and 5 million, we set an administrative limit of 8%. And if their budget is below 2.5 million, we set administrative limit of 10%. So that's why you see the big brothers/big sisters, because they're a smaller budget overall as an organization, and -- than those others. But the children's investment fund staff and all of our administrative expenses are under 5%, and that's what the ballot measure was -- said.

**Leonard:** And you're saying that's not reasonable to put some conditions on donations to these organizations of a limit of 5%?

**Saltzman:** Well, we've put a range of 5, 8, and 10%, and i'll tell you in a lot of organizations have pushed back on that and say we're being excessively onerous in that regard, because also with a what we do is we've disallowed certain expense that's are typically put into proposals. Certain reimbursables, we've said we're not going to pay for those, computers, phone systems, travel, things like that. So I think the allocation committee feels we came up with a pretty stringent set of administrative caps according to the -- but trying to benchmark it to the organization's overall budget. So I think we've got some pretty stringent limits already.

**Leonard:** In the second sheet that i'm looking at, is that -- are those monies that have been allocated of the spreadsheet, the second page?

**Saltzman:** These were people that applied for round two that didn't get funded.

**Leonard:** That didn't get it, ok.

**Saltzman:** It's everybody, i'm sorry. So the top four got funded, plus the native american rehabilitation association.

**Katz:** But the rest did not.

**Saltzman:** The rest did not. That's the total 8.5 million we received for roughly 1.2 million -- they're ranked by score under the total score column from top to bottom.

**Leonard:** Just so I understand better, when we fund something, a grant -- grant dollars, don't they have an infrastructure in place, and we're just paying for specifically a program, or do they also have to hire people to run the program? Do they have to put in phone lines to administer the program? Or are you saying those things are not in place?

**Olshin:** It varies.

**Saltzman:** It varies, but if they are expanding program capacity, they're typically adding additional people, and we try to be reasonable and to allow some growth in their infrastructure, but those are some of the questions we wrestle with when we find somebody like a program administrator who's put into the proposal at .03% f.p.e. or something, those are things we've been taking issue with, because those people are already there, they're just kind of doing -- prodding the base how that person is paid for, and those are some of the things we're continuing to negotiate in the final contracts, because I personally have questions about the propriety of those types of things.

**Leonard:** Good. That's what I was getting at, so I am much more assured by your answer.

February 11, 2004

**Saltzman:** For things like family support teams, and things like that, these are new people that would be serving additional kids.

**Francesconi:** I have just one last question. It was your comment, andy, that made me think about it. We're having important discussions about important accountability measures, but then you mentioned that the real goal was changing young people's lives, children's lives. How do you measure -- that one's tough to measure. How do you -- talk to me about what type of performance measurements you're trying to put on that.

**Olshin:** Ok. We start with the ballot language and looking at the school readiness and high school and reducing juvenile crime, and we try to work down from there and what we've done is we've established an evaluation subcommittee, which is cochaired by dr. Willis and dr. Henry. We've put together a group of academic folks from many of whom reviewed proposals during round one, and round two. And we've also looked at breaking up some of the organizations that we fund into different clusters or focuses. And then taking a look both at the individual outcomes that -- which say how a child's reading level increased over time, and looking at the program outcomes, how the money we invested increased x number of children's reading levels over time, for example. And then we try to aggregate that up to see if there are community level outcomes we can measure. The community level piece is extremely difficult. And the amount of dollars that we put into this is not necessarily give us the ability to track our impact at the community over the course of a year or two. Hopefully over the course of three or four years we'll have some idea of how that will impact on some of the graduation rates or some of the other things. We don't know if it will, but we'll try our best. One of the things we did to do that, if we've contracted with Portland state university's child welfare partnership to review the first cluster of 13 early childhood programs to see, again, work on an individual basis to make sure that the organizations have the capacity to produce the numbers and to produce the information, then we can take a look at it to see whether it does what they say they can do. But we start with a premise that we're funding proven programs. So that they have to be evidence-based in that they have to be connected to some kind of research. There's a spectrum of that research, and community-based research and other kinds of more scientific research that we're trying to get a handle on at the same time as we're trying to put these dollars in the community to help as many kids as we can. So it's a balance. It's a balance there. I don't know if i've answered your question, but we're going to do our best so number 1, track the outputs or the numbers of kids that we can help, and also the impact that the particular service has. But it's grounded in a set of proven programs that have had some research or some basis that we can say they work, as well as an academic committee that's reviewing that on an ongoing basis. And we will do our best to stick to it.

**Saltzman:** We're going to get quarterly performance reports from each grantee, and the first round of performance reports is coming due. And we'd be happy to share those with the council members too.

**Katz:** You will share them.

**Saltzman:** As we get them, ok.

**Katz:** I'm just curious, on the native american rehabilitation association, n.a.r.a., it says that it's based on cultural beliefs versus evidence. Do we have research on a treatment modality for american indian population?

**Megan Macleroy:** The program specifically that they plan to implement, positive indian parenting, has been reviewed in some academic journals about its cultural specific program modality, abilities as well as its adaptation of a traditional parenting as teachers, scientifically-based researched program. So in other words, I think they're -- I think they're going to be able to do something effective because they're using a program that's been well tracked, though not researched to the

February 11, 2004

extent that parents as teachers has been, but based on cultural belief systems adapted from a model that has worked with a greater set of the population at large.

**Katz:** So they integrate their belief system and their culture with an evidence-based model.

**Macleroy:** Right. And that evidence-based model is called positive indian parenting. It's a model that's been around for over 10 years, and it's been used on reservations and with native peoples across the country in different locations, and like I said, hasn't been researched to the extent that parents as teachers as a curriculum has been researched, but it has been tracked to some degree, it has shown success.

**Katz:** Thank you. Ok. Further questions? All right. Anybody else want to testify? Anybody sign up?

**Moore:** No.

**Katz:** Roll call.

**Francesconi:** Well, this has been an important strategy for changing lives, and we appreciate all the early success that you've had and the rigor at which you're approaching this. Commissioner Saltzman used the word "sobering" and "inspirational," applying to the work of the providers, or the people that are dealing with these young people who could be making more money doing other things, and I think that's very true. But it's also both sobering and inspiring given the circumstances that have changed since this passed the ballot. Because now we have a deteriorating unemployment situation statewide, and the poor are the first to suffer, especially the parents of these kids, and then the fabric of the social safety net. I don't think we can say it's frayed anymore, it's just nonexistent for most of these folks. So it is important that we try to look at issues like not backfilling, but we have to realize the circumstances have changed, and there is some desperation now, not only in these individual families, not only in the providers, but some sense is creeping in into our state. So this is an important tool, or important strategy. I think it's more important than ever that these kind of prom ever performance measurement that's we've been talking about be adhered to, not only for your program, but for government in general. It would be nice if we had some performance measurements that are common among the schools, among the parks, and after-school programs, among the early childhood. So -- that we align community efforts. And we're all kind of pulling the same direction in this bowl here -- boat here. The categories of academic performance which include math and reading skills graduation rates, one cluster of those commonly held performance measures, the other is reduction in juvenile crime and youth violence, another would be health types of issues. And a fourth would be youth employment. If we could kind of do locally what the progress board has done for the state and what efforts we have had here already with the -- our local progress board that I haven't heard much about for a while, and then that way it's not all incumbent upon you to come up with these performance measurements. But there's some standards, you know, that would be commonly applied. Then I think not only will we have more credibility with the voters, but we might have a chance to actually change lives at a bigger scale to the sense that we can get more investments in these kinds of things. But thank you for your efforts, which were more important now than they were a year and a half or two years ago. Aye.

**Leonard:** I have long felt that programs such as what these dollars fund are not expenses, but investments. And there's a major philosophical rift in Oregon right now over whether or not these kinds of programs are expenses or investments. In my mind any time that you do something to service a child who is in a home where there is abuse or neglect, any time you service -- provide services to a child who has been abandoned who has --, abuse, or mental health issues, and i'm just reading off some of these programs are being funded provide for, those aren't expenses, those are investments. And it's a foolish mistake to consider them expenses. Because what happens in the long term, if you get -- intervene early on with children and there have been studies ad nauseam on this, is that they have a higher incidence of incarceration if any at all, they can go on and actually

February 11, 2004

become productive members of the community as opposed to an expense for the community, and they become members of our community rather than tormentors of our community, and that we can't seem to get this across down in salem to the majority, a deep disappointment to me. We can't, so we have to do it here. And that's the bottom line. I'm just as i've said before, very pleased to work with four other people who are of like minds. And I don't know that we always appreciate that as much as we should here. Aye.

**Saltzman:** I appreciate the council discussion we've had today. You've asked good questions, and questions that we ask ourselves a lot as we continue forward in this whole new realm of children's investment fund, the voters were generous to give us this opportunity to really invest in programs to help children, young children to help prevent abuse and intervene in it, and in our next round of investments is after-school programs, and mentoring programs. And so there's a lot of questions as we go that we're wrestling with, and indeed about administrative expense, about making sure we're not allowing backfilling. Which is difficult in this time of diminishing resources for many of these organizations, and the children and parents they serve. It's a difficult thing to grab the right snapshot of what you measure backfilling against. But we are moving ahead. We've had as andy described, we have a great infrastructure of citizens, foundation members, academics who are stepping up to help us wrestle with these problems, and the allocation committee has worked hard, staff of the children's investment fund have worked hard too. So it's a lot of labor, but I think it's a labor of love and it's a challenge, and it's a real hope that we can truly demonstrate to the voters that these were investments as you said, these are investments in children that are going to make a difference. And we will continue forward. Thank you for your support. Aye.

**Sten:** I'm very pleased to support this. I want to again thank commissioner Saltzman and his team. I think it's obvious that the people of our city actually get all these things that we're saying about the need to invest young and how it's not only the right thing to do, it's a better investment, in the long run because they voted this through. And I think it's hard as it was to win this measure and commissioner Saltzman really did that on his own to win -- I think even more challenging is what you're working today, which is to show some bang for the buck and I really feel like I didn't have a lot -- ask a lot of questions because I feel like you've done a such a thorough job of having an expert process, I want to be clear that's the right way to make these decisions, that's the right way to allocate these pieces. It's inspirational and a little amazing how many groups out there are trying to work on these issues and how many applied. There's an amazing infrastructure there and question of the community, can we put the same kind of effort into these early childhood programs that we put into some of the other things, because I think what you're going to show is it's going to be money well spent and a great thing to do. So i'm glad to vote for this and I knew this day would come, but you've been working on this for a long time. Congratulations. Aye.

**Katz:** Let's talk a little bit about results, because i'm going to be very practical. We've done this, we're going to do it for x amount of years. I assume, just like -- let me -- I assume that we'll probably, once we take a look at the results, ask the voters to continue this program. I'm sure you're operating with that assumption. Correct? So let's talk a little bit about how you measure results. Telling us that they treat 10 or 120 youngsters is not result measurements. That's inputs. Take a look -- I don't need to lecture you on this, but I need to make sure that everybody hears this, because that's --

**Macleroy:** You're the mayor, you get to do that.

**Katz:** You really want to look at outputs. And you heard the council members describe what kind of outputs, I think commissioner Francesconi was very specific in terms of our ability to see whether we've made a difference in these families' lives or in these children's lives. We assume, we make the leap of faith that those investments will make a difference, and I believe they will. But the leap of faith may only be something that we feel strongly about, and you're going to have to

February 11, 2004

convince the citizens of this community that those increased taxes have really made a difference. So I would go online, pdxonline, take a look at the progress board data and talk to them if you have not already to see what it is and how you can make some assumptions on what you're going to need to look at when you do evaluation. And I remember we talked about evaluation when we initiated this, commissioner Saltzman initiated this program, and I hope that there's some resources to do just that. Because without that, it may be very difficult to convince the voters that what they're doing will have long impact on people's lives. So thank you, and commissioner Saltzman, thank you again for making that commitment to do this kind of work. Aye. [gavel pounded] all right. Item 105.

**Item 105.**

**Katz:** I'm going to ask commissioner Francesconi to say a few words, but this is an example of what the city does to help businesses locate or move to a much larger area, and we found that there was an issue, and we figured out how to solve that problem, and that's the ordinance that you have before you. We figured out that with the help of a lot of smart people in the city, that we can do it this way and remove all kinds of conditions on the land that is going to be developed and built on for one of the largest facilities for our four-legged friends. Anybody want to testify? Roll call.

**Francesconi:** The mayor said it well. It's also -- it also will bring good jobs to our city, which is all of our concerns. And we're pleased we could do this as a team. Aye.

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

**Katz:** Mayor votes aye. [gavel pounded] let's get to the regular agenda 125.

**Item 125.**

**Sue Klobertanz:** Mayor and councilmen, I'm Sue Klobertanz, director for the bureau of purchases. Council item 125 that you have before you recommends award of a contract to Napa Auto Parts for an 18-month pilot project to implement business and operation services for the parks and warehouse stores warehouse function. If you sort of remember back, the administrative review report that was completed in January 2001 highlighted the opportunity for relooking at how the city provides warehouse or store keeper services. The parks bureau took that information and began to look into the possibility of developing a public-private partnership to replace their current warehouse services. After about two years in May of 2003, so just recently, the council authorized the ordinance that released an r.f.p. for the 18-month pilot project. In that ordinance that you had in May, you had a lot of background information about both the proposed form of the contract and also what services would be provided. Although a number of firms expressed interest in submitting proposals on this particular pilot project, we actually only had one proposal submitted in June. And since that time, both purchasing and parks and also with the assistance of the city attorney's office, staff has been negotiating with genuine parts company doing business as Napa Auto Parts. So today after almost three years of work, we've now reached a place where we can enter into a contract that allows us to move forward with not one, but actually two pilot projects. The first is the administration of the parks warehouse. And the purchasing agent's report that you have in front of you indicates that although the expected expenditure with Napa Auto Parts will be somewhere around \$8 million, depending on the need for parts, that at a minimum, Napa Auto Parts has guaranteed the city a savings of \$200,000 at the end of the 18-month period. So they are that confident that they can buy through bulk purchasing and their negotiated contracts with other manufacturers and vendors that they can buy parts in a manner that will save the city money that they have guaranteed us that as we track all of this. That at the end, if it's not at least \$200,000 less than we would have otherwise spent based on our current spending patterns today, that they'll write us a check for the difference. So that's a pretty exciting way to begin to chip away at how we purchase things. The second pilot project intertwined into this particular contract is the use of the city's procurement card. We're proposing with Napa Auto Parts that they actually bill the city

February 11, 2004

through what's called a ghost card, in other words, they don't submit an invoice, they actually bill to bank of america what the city owes them, and then the city would pay them through our payment to bank of america. That does a couple of things. One, it gets the vendor paid more quickly, two, it allows the city to maintain the same 30-day float we would otherwise have on our money if as if they submitted an invoice, but also, three, it cuts down on administrative costs, so instead of napa billing us and then us dealing with invoices and writing checks and things like that, it's through -- they would be paid through the one payment that's made to bank of america. So there are some administrative cost savings there. I want to take just a pause here and remind the council that the ordinance you passed in may calls for an expectation that after 12 months of this 18-month pilot project, the parks bureau, purchases, and the city auditor's office would actually stop and look at 12 months worth of data, audit that data, and look at cost savings, ability to deliver the required services, and also utilization of minority women and emerging small businesses and local businesses in that project. Following that audit, we would then bring back to council before any extension of this contract or expansion of this sort of contract, a report to you that says, did we deliver what we thought we were going to deliver. I've also been asked to remind you that the small business advisory council, which you have met with and heard their work program, had the outsourcing of city services as one of their priority items that they really wanted to look at. They were representatives were unable to be here today, but they expressed their support for this effort and resulting audit of the effort. I'm going to allow mary huff from the parks bureau to talk about a couple of specifics about the process and the pilot program, but finally I guess I wanted to say that I think this is a great example of bureaus working together and how we are constantly in the mode of trying to figure out how to do business better and more efficiently. I recommend the council approve the purchasing agent report before you today.

**Katz:** Before mary starts, sue, thank you, I just smiled, was that \$200,000 in the forecast, or not?

**Klobertanz:** I believe it's already been taken out of parks budget.

**Katz:** All right. Ok. Go ahead, mary.

**Mary Huff, Bureau of Purchases:** This has been a long process, and I noticed that both wayne and -- are back there. I wanted to thank them. They have really helped us, I think, make this a much better proposal. Their scrutiny and their holding us to task and making sure that we have provisions in there that protect the workers, I think is -- commits them to the process as far as, we wouldn't have thought of a lot of things if it hadn't been for them, and they made it a much better r.f.p. and a much better contract proposal. We did go through the article 6 process that's in the contract with the notification submitted the information, and have gone through that particular process, and we also are looking forward to their scrutiny and engagement and reviewing this program as it moves forward. Did you have any questions?

**Katz:** No. I just want -- go ahead.

**Saltzman:** Just on the ghost card, so to somebody -- does somebody in the city still review each invoice?

**Klobertanz:** Oh, certainly. Yes. Both internal to the bureau, and in addition on this particular pilot project, napa will be providing an incredible amount of detail behind the billing that the parks bureau staff will be reviewing.

**Saltzman:** Ok.

**Katz:** I just want to flag that this is an example of some of the work that sue and others are going to be doing as we look at how we purchase products across the city, buying in bulk for a lot of the bureaus and hopefully see if we can negotiate some deals with vendors, if that's even doable, but at least buying in bulk and purchasing differently. Hoping we'll save millions. Ok. Good. Thank you. Anybody want to testify?

**Moore:** Yes, we have a gentleman.

February 11, 2004

**David Maybe:** Good morning, mayor and commissioners. My name is Damon Maybe, I'm with Labors 483 and was part of the committee. We have a few concerns. First off, I would echo Mary's statement that it's a much better r.f.p. than it was. But one of the concerns we have is that when we got the proposal and we started to review it for our article 6 contracting out language, one of the things that quickly came to mind is that -- came to head was that the city doesn't necessarily know how they do business. We were looking at how we compare costs for purchase order versus a procurement card, what the charges are that are being assessed, and while we may not have been able to come up with \$200,000 worth of parts savings, one of our concerns was that we couldn't come up with any sort of systemic savings because the system isn't very clear. One of the issues that I brought up with parks four or five years ago is when they went into a bar coding system, is why, why are you buying a brand-new system when all the other store rooms have bar code systems? Go get their system and be part of it. Talk to each other, share the information. Why does a park person need to drive to Mt. Tabor yard when they're working right next to B.E.S., why can't they just get the parts there? One of the concerns that came up is, they were afraid of B.I.T. taking over the process, saying, now it's multibureau --

**Katz:** B.I.T.?

**Maybe:** Bureau of information technologies. That instead of me having my system and controlling it, that now multiple bureaus have it so we're going to control it, which then means store keepers are in charge of their own store's inventory process. So that was a big concern. It's been out there for quite a while for us. Additionally, we're not all that sure that parks has chosen to be the most efficient in what they do. This pilot project is going to help establish that, but there is one of their interests was improvement of service, therefore they wanted a person who could be a delivery driver. There is a store keeper one level that's a warehouseman delivery driver at less than the cost of a store keeper 2. But when they hired one, they hired a 2 for greater flexibility. But now Napa is coming in with a manager and a store keeper 1. So there's lots of internal things that I think could have been done, and we will be keeping our eyes on the process, and challenging it at every opportunity to try to make it better and prove that the city can do the job the best way.

**Katz:** Thank you. You have raised a lot of the issues that we're looking at now citywide. And I would ask you to talk to the union representative that is watching the budget process and make sure, or talk to Sue, and make sure as we begin looking at all of these issues, this duplication of efforts in terms of the purchasing that you described, or how we handle it, make sure we're on top of it as we review it and make some systemic changes in our -- in the way we do business. Thank you. All right. Anybody else want to testify? Then I'll take a motion to accept the proposal.

**Leonard:** So moved.

**Saltzman:** Second.

**Katz:** All right. Roll call.

**Francesconi:** You know, there's everybody's trying to determine the -- what are the lessons learned from measure 30, but I think one of them is that our citizens here in Multnomah county have reached a saturation point on taxes, given this economy, and we have to do business differently as an organization. Especially to maintain the quality of services in parks and throughout the city that our citizens expect. So this is something I actually pushed. I pushed pretty hard, and I know that I pushed the union on this. And I want to echo what Mary said regarding Wayne and Damon. You were willing to kind of work with us on this, even though you didn't like it. And raising issues about how we do this citywide that are very legitimate. But here's a circumstance where we're cutting administrative costs by consolidating a billing once a month, and using a pricing network that always looks for the lowest pricing in our stores over 6,000 public and privately owned warehouse operations. That's how it works. So we have the advantage now of going out to 6,000 different operations to purchase at the lowest cost. And that's why they've guaranteed a minimum

February 11, 2004

of \$200,000. They -- that can be used to maintain our parks and the infrastructure. And to try to preserve jobs of good folks that are working maintaining our parks. And that's what this is all about. And that's what we're trying to do. So we've guaranteed that no employees will lose their jobs in these store operators have been placed in other operations within parks, and doing things that needed to be done. But the truth of the matter is, we needed -- we need to do this in order to maintain our parks and our city services at a price our citizens can afford. So we have to monitor this and watch this, which we will. I always want to thank mary and jim, who have been persistent on this for a long time, and who looked for ways to do things officially, and I appreciate your efforts very, very much. Aye.

**Leonard:** This is good, smart work and I appreciate it. Aye.

**Saltzman:** This is very good work. Aye.

**Sten:** Aye.

**Katz:** Thank you, everybody. We are going to be looking at further consolidation of the information technology systems here in the city that are spread all over, because you're right, people want control. And we just -- we can't continue doing business that way a, and b, we're going to be looking at how we share storage or maintenance facilities so that there is one location, and that -- not everybody necessarily has to have their own little facility for parts or anything else, especially if they can be shared with other bureaus. So that's my hope, at least we'll make a start of this year. Aye. [gavel pounded] all right. I know this is what you've all been waiting for. Item 126.

**Item 126.**

**Katz:** I never said this to jeff, but when I became mayor I said, when is jeff going to retire? And I guess it wasn't -- he wasn't ready to retire, and it was -- and he's not retiring.

**Leonard:** He wasn't old enough to retire.

**Katz:** It was to all of our benefit that he stayed, because he taught me personally a lot about balance, measure, and thoughtfulness about dealing with some very, very sticky, sticky, either human resource issues or legal issues. And I am so happy that the rest of the council doesn't always have to deal with him, but in many cases when jeff appears at my doorstep unannounced only I can deal with those cases and enforce -- and am forced to do it. And it is always -- the information is always presented to me with a lot of thought and a lot of sensitivity about the benefits to the city and to the taxpayers, and I want to thank him for not only the years that you served all of us, but for the years prior to that. As you recall, we -- the city of Portland received some notoriety on a hot national issue, and jeff stepped in and did a yeoman's job in analyzing that situation and making sure that we were on sound legal ground and helped shape the position for this city on a very hot emotional national issue. So that's I think the way i've really am going to remember all of your work. Because I saw what kind of research I think you did personally, and I wanted to thank you. So jeff is leaving. And he's going on to another career. I would not have recommended that other career to him; because my professor and I both agree that that was not a career for me, and I figured if it wasn't a career for me, I don't think it's a career for you. But why don't you come on up before we take the real issue, come on up, jeff. I know. You know what I do when people leave?

**Jeffrey Rogers, City Attorney:** I'm scared. [laughter]

**Katz:** First, it gives everybody an opportunity to say thank you. But second of all, it gives us an opportunity to ask you, a, what have you learned, and what -- and what advice would you give us as you leave? You are now free to do all of that.

**Rogers:** First thing I learned is when I asked linda if I should accompany her today, she said yes, I should have ignored that. So I wouldn't be put on the spot. Actually, i'm writing out some thoughts. And I think i'll -- if -- with your permission i'll send that memo to all of you, and that probably states more accurately what I would like to leave in terms of some big picture opinions that I could do in a few short moments here. But I will say one -- an overall thing i've learned is the

February 11, 2004

quality of the people in this place. And I wish, I wish, I wish that citizens really could understand that. And I wish the media would present what I believe is a more accurate picture of that. And that's why i've stayed. I didn't know you were thinking about when I was going to retire. [laughter] actually, I sort of sensed that, because I sensed some what should I say, reservation about lawyers. None of the rest of you had that. Certainly commissioner Francesconi hasn't had that. Commissioner Leonard occasionally has been known to be skeptical of lawyers, I --

**Katz:** We want a yes-or-no answer, usually:

**Rogers:** You're asking me what i've learned.

**Sten:** I need a lawyer. [laughter]

**Rogers:** I'm not going to ask why.

**Sten:** In general.

**Rogers:** In general you just want around all the time?

**Saltzman:** A controversial commissioner.

**Katz:** What did you learn, jeff?

**Rogers:** You know, it's hard to summarize it. I have felt a great gratitude and satisfaction at working in the public sector. I've worked a little bit in the private sector, I think the private sector of course play as vital role in our culture, but certainly so does the public sector. I think I said in my letter to you stating my retirement plans that -- and i've recently reread some of the articles from the 1950's when my dad was first in public service, and the tone then was so different. There was a respect for public service and for those who go into it. And when I ran for metro and fortunately in retrospect lost, I gained much enhanced respect for politicians. It's said as a dirty word, but it shouldn't be. The sacrifices you all make and the sacrifices people make in this city in management positions and in employment positions are really quite remarkable. And I don't know how we're going to get back to that understanding, but we've got to get back there. We've got to get back to recognizing that people in our community and all different -- in all different aspects of the institutions are committed to making this place, this city, this state, this country a better place. And doing so with hard dedicated work. And the cynicism that infects us as a country these days is really discouraging to me. And i've learned that somehow we've got to find a way to overcome that. I was really disappointed in the tim hibbitts poll recently which as I recall a report was that when people were asked what percentage of revenue does the state of Oregon waste, the government, state government, they -- the average response was something like 39%. People believed on the average that the state government wastes 39% of its revenue. That's discouraging. And those of us who work in government know that's not the case. And so i've learned to respect more than ever the quality of people working in this city and elsewhere in the public sector what I haven't learned is how to help change the public perception on that. Because it's got to change. In any case, i'm enormously grateful for having worked with people in this city for 19 years, and I will miss it. Thank you.

**Katz:** Thank you. [applause] [gavel pounded] thank you. And now jeff, why don't you introduce linda. Linda, come on. We did not rehearse this. So they absolutely don't know what i'm going to ask of them.

**Rogers:** I thought we were just going to sit out there. As everyone knows this, is linda meng. I'm jeff rogers, 50% city attorney, this is linda meng, 50% city attorney. Since september linda and I have been job sharing the position with your kind agreement. And the ordinance before you today would have you appoint linda as permanent city attorney full-time effective the day after my retirement, which is the date of her appointment will be february 26, two weeks from thursday. I enthusiastically recommend your approval of the ordinance. I'm confident that I speak for everybody in our office, and for everybody who has worked with linda over the years here in the city when I say that if you appoint her, if you approve this ordinance, you will be doing a great

February 11, 2004

thing for the city. You could not find anybody more highly qualified to do this job than linda, no matter how long you looked. She worked for four years starting her legal career in the court system, she was court clerk for the court of appeals, and received rave reviews for that work as she has in each of her jobs. She then worked in private law firm for seven years, became a partner in the lindsey hart firm, and again had a wonderful reputation there. And has been with our office for 12 or so years, doing outstanding work as I think all of you know. So I think that all know the process perhaps of appointing in this way is quite different than what was done 19 years ago, it is the right thing to do, and I think you all know linda well enough to know what a great job she will do. So if you appoint her, I think it will be one of the happiest professional days of my life since I was appointed. So that's my recommendation.

**Katz:** Thank you. Linda?

**Linda Meng, City Attorney:** Thanks, jeff. I really look forward to this job if you decide to vote for the ordinance. I have to say that it's somewhat daunting to step into jeff's shoes. Having worked with him for these years, he's a great boss, a great mentor, he's truly wise, in lots of ways, and I don't find myself saying that about very many people. But i'm fortunate in stepping into this job having worked with him, because i've learned a lot. I'm also really fortunate because we have a terrific office, a lot of that is due to jeff's work in hiring and retaining people of extremely high caliber. Our staff and our attorneys are great people. They're highly dedicated, they're experienced, they're smart people, and they're great to work with. So we have a great office. And I feel really fortunate for that. I also really feel fortunate for working for the city of Portland, because I think it's a great place to work. As a legal job, it's a great job. There's always new things, it's always exciting, it's always challenging, you're always coming up with new things that you want to do that we have to figure out how to help you do. [laughter]

**Leonard:** Why are you looking at me? [laughter]

**Meng:** I'm trying to share the credit. But it always keeps it exciting, and it's the one thing about legal practice that i've always tried to do, is to have practice that's always new and interesting and challenging, and the city certainly is that.

**Katz:** Thank you. Thank you very much. I think we're going to agree as a council to make you our city attorney. You've worked with all of us on some very difficult issues, and will continue to work with us on very difficult issues. When jeff came into the office and made the -- made the recommendation, I knew at that point that that was the right one, and the council had agreed, and the fact that he was your mentor makes all of us feel even more comfortable, because the foundation for the city work has been provided to you by jeff. And jeff, not only -- god only knows what you're going to do, and -- but you -- why don't you tell us what you're going to do.

**Rogers:** Well, some people say i've had some practice at this, but -- [laughter] i'm getting a master's degree in counseling psychology, and at the present am doing an internship working with clients at kaiser permanente in their mental health department. I get my degree in june, assuming I complete the requirements, and then i'm going to take three or four months off completely for the first time since high school, and who knows after that.

**Katz:** Thank you. Thank you for your years of service, and linda, welcome. Welcome to every day a very exciting day, especially with this council. Good. Does anybody else want to come up and add anything? Come on up. This is your day. You guys sit there.

**Pete Kasting, City Attorney's Office:** Don't worry, I will be brief. Pete kasting, city attorney's office. I want to commend the council, 19 years ago the council made a terrific hiring decision, it's poised today to make another terrific hiring decision, and I thank you for that. The other thing I wanted to pass along about linda specifically is that when she applied at the city attorney's office for a deputy city attorney position, I was part of the group that was checking references. One of the references I checked was mick gillette, a chief judge supreme court judge now, and I remember his

**February 11, 2004**

exact words when I asked for his recommendation, and they were, quote -- hire her, hire her, hire her. Closed quote. He was right, and I hope council takes that advice as well. Thank you.

**Katz:** Thank you, pete. Anybody else? Ok. Thank you. Roll call.

**Francesconi:** Well, I actually had the privilege of probably knowing 400 or 500 lawyers in this state, and I would not trade the legal team that's been assembled by jeff and by the city for any private firm in the state that I know. Nor would I trade the talent at the top in both linda and jeff. You have to be -- it takes a certain set of skills and ability. The -- knowing the law, of course, being very bright and intelligent and focused, but also have a heart for the public good, which you two have. And then being extremely tough, and linda, I think was it a soccer goalie or rugby, and that's a fitting, because you got to protect the taxpayers, and you've got to -- and you're tough. And that's important. That's a very tough ingredient. But the public good that the lawyers that we have the privilege of working with do is I think what's distinguishes you from most. So it's going to be great to have you as our city attorney. Jeff just very briefly, but i'm sure your mother contributed maybe even more, but for us to hear in Portland to be blessed with the son of a united states secretary of state who could have chosen any place in the country, any cause in the country, could have made far more money than you're going to make, than you've made here for the last 19 years, for you to bless us with your legal talent and heart and so a -- to assemble a team is a credit to your parents, it's a credit to -- we've been lucky to have you. So I appreciate on behalf of the citizens of this city who have been blessed by you, thank you. Aye.

**Leonard:** Not only is he a son of the secretary of state, he's the son of an attorney general as well in the eisenhower administration. I've worked with jeff longer than anybody here. I became president of the -- , for, advocated against, he became a city attorney at the same time I became president of the firefighters association. So i've actually worked with jeff in three different capacity, as a union leader, a legislator, and then a city council person. And he has never treated me any different in any of those capacity. Which is a testament to what the -- a word we don't hear as often as we should, integrity. One thing I really respect in managers is when they are very loyal to their employees, because it breeds loyalty from them to him. And I have been known on occasion to let an utterance slip about some flippant remark about an attorney, and he -- his -- he is quick to come right in and sit down and let me have it with both barrels, which I appreciate a lot. And linda, I encourage you to do as well, because i've always thought that those that dish things out ought to be able to take it, and if you can't, you shouldn't be here. And jeff has just done a really remarkable job of standing up for his staff, of sitting down with me at times when i've had things I wanted to do and kind of set me straight, and I appreciate that. I have actually worked with linda some too since i've been here, and have enjoyed very much the relationship that our office has with her and her forthrightness and her dedication to doing the right thing. But you're right, have you big shoes to fill. I'm glad you said that. Thanks very much jeff for your service, and we'll look forward to working with you, linda. Aye.

**Saltzman:** It's been a true pleasure to work with jeff and I look forward to working more with linda too. I truly in the five, six years i've been here now have gained an appreciation from just the array of activities that come across the desk of people on the fourth floor in the city attorney's office. Everything from paying people who get rear ended by police, who are looking at their m.d.t. screens, and i'm always questioning why we -- I see all these settlement and wonder, how come we're not litigating things like that? But some of the first meetings I had with jeff was counseling me on the cost of pursuing claims versus settling claims, and -- but all the way to huge issues, the study of the acquisition of p.g.e., and the whole negotiations and things like that. Very complicated issues, and everything that you just run the gamut. I think as linda meng said, wisdom is something I definitely sense, have sensed in you, and felt you have imparted some of that wisdom to me over the time i've had to work with you. And we certainly appreciate your unerring decisiveness too,

February 11, 2004

always telling us, well, maybe. But I guess that's part of the nature of attorney work. But we do appreciate all the service you've given to us and Linda, I'm sure you'll carry on in that excellent tradition. Aye.

**Sten:** It's always a little of a sad moment when somebody with your talent leaves, and -- but it's tempered a little bit because my -- I sense it's the right time for you and you're pursuing some pretty exciting things, and to see somebody that's this accomplished have the intellectual creativity and guts to go out and do something completely different is wonderful. I think the mark of a very good leader is who is right beside him or her and underneath him in terms of the order, and with Linda ready to step in, I have no reservations about Linda's abilities and so it makes your leaving OK in that sense, because it's the right thing for you and we have the right person to step in. And that's a remarkable situation. Probably the easiest way I could sum up what I think, it's been such a pleasure working with you, is that honestly I'm not just saying this, when I think of the idea of a public servant and a lot of ways the ways you're describing what people ought to view as a public servant, you come to mind. You're a person who has worked diligently and aggressively and with the public's good in mind, and it's pretty amazing when I'm in the middle much something that's contentious, destined to be litigious, perhaps hopefully reasonably well thought out, but something that's pushing the envelope a little bit, I look forward to meeting with Jeff as opposed to usually you don't look forward to meeting with your attorneys, because he's going to come in and say, all right, what are we trying to accomplish, how are we going to do it and has a remarkable ability to parse how to take risks that need to be taken on behalf of the citizens in a way that's as safe as possible and has such a great sense of when this stand -- to stand up, he's not a lawyer who says how I do minimize exposure, he said, how I do maximize the public good, which is a very different question. And sometimes it involves enormous risks and sometimes it involves saying no when something is too risky. I think you've been in -- the perfect advocate for the citizens of Portland, and have you done that with a view -- so it's been a great pleasure working with you, and of course I'm going to vote aye and Linda, you have some big -- a big desk to fill but I believe you'll fill it very quickly and ably.

**Katz:** Jeff, thank you for teaching me a lot. I turn to you when I needed counsel and advice on major issues facing the citizens of this community, and I thank you for it. I also argue with Jeff, and he argues back. Pay more, pay less. I remember there was a case I wanted to pay the plaintiff a little bit more because I thought they had deserved it. We didn't treat them as well as we should have. But most of the time it was pay less, Jeff says, settle, and then I always push back, why. Give me the arguments. And he usually is very thoughtful and 99% of the time, actually 99.99, it was that one time where I said pay more, he was absolutely right. So thank you very much, much luck in your profession. Pass out your cards once you decide whether you're going to practice. We may all need it. [laughter] and Linda, we welcome you now as our city attorney. I love working with Linda. She's a girl. [laughter] and as a girl, I can read her body language better than I can read Jeff's. And when you're in a room with strange people on strange and very difficult issues, whether it's p.g.e., p.g.e. park, anything that starts with a p. [laughter] And you don't quite know where to go or at least what the first question to ask you look at Linda. And she'll tell you. She won't say a word, but she gives you a sign and encourage you to go ahead or to stop before you get yourself into trouble. So thank you very much. We're all looking forward working with you. You've got a great team, we all know that. And you'll do wonderful work for us. And for the citizens of this city. Aye. [gavel pounded] [applause]

**Item 127.**

**Katz:** Thank you. All right. Let's go on. Item 127.

**February 11, 2004**

**Katz:** Ok. If you recall, this was here, we took it back, they looked at it, came back, and there are still issues that probably will percolate up on this. And council will have to make a decision. Go ahead and explain.

**Anna Kanwit, Bureau of Human Resources:** Anna Kanwit, i'm operations manager for the bureau of human resources. This -- the rule basically does restore the paid leave used pending the acceptance of a service connected disability at the rate of 100% instead of the prior rate at 75%. And also reiterates the requirement that members turn over their checks that they receive from fpdf back to the bureau that's cover the same period of time they used the paid leave to prevent a double payment. That has always been the requirement. The rule simply reiterates that. I think somewhat naively I assumed back in november that this was an uncontroversial rule change for the city, but as the mayor alluded to, the issue did come up of whether the ordinance should be retroactive as opposed to effective on the date it's passed by council. The amendment that you do have would make this rule retroactive to july 2002, and that has been at the request as I understand it from both the Portland police association, the Portland firefighters association. The Portland police association does have several outstanding grievances on this issue, but as I pointed out in the materials I provided to you, they have given us written commitment that those grievances will be withdrawn should council decide to make the ordinance retroactive. The bureau of human resources has not supported retroactivity really for two reasons, which i'll explain very briefly. One is the date is really arbitrary. Although the Portland police bureau apparently did have a practice of reimbursing at a higher level, that was not the case in the fire bureau. And so we have obviously members of the fire bureau who received disability checks prior to this date, july 2002, who would not be reimbursed at the higher rate. The second reason is there are a number of members who did receive disability checks since july of 2002 who failed to turn those checks over to their respective bureaus. That is in violation of the work rules and the city rules. Whether the checks have been cashed or not is not the issue, but then in essence retain add double payment for time. That they were paid once by using paid leave, paid a second time through fpdf, and so making it retroactive to a certain extent rewards them for retaining those checks. That's all I have. If you have questions about the ordinance, again, it is the same rule we submitted last november.

**Saltzman:** So is there an obligation on those regardless of the retroactivity who in essence receive double payment to reimburse the city?

**Kanwit:** Yes. The city charter, bureau work rules and the hr administrative rules prevent double payment, and when the member applies for a disability -- service connected disability, they are entitled to use paid leave for the time period between the application and when the disability is accepted. And then when that's -- the claim is accepted, there's a payment from fpdf, and that covers the same period of time that the member used the paid leave for. So that's the double payment. And that's why there's a requirement that that check get turned back to the bureau and then the paid leave would be reimbursed and had been at 75%.

**Saltzman:** So there's no obligation on those members affected, or who have received the double payment to pay us back.

**Kanwit:** There is. Yes, there is. Yes. There is an obligation to pay the city back.

**Saltzman:** Regardless of whether the check has been cashed --

**Kanwit:** Right. Absolutely.

**Leonard:** I wonder if I could just maybe give a broader picture of this issue. Portland's fire and police are not members of the workers' compensation system. If they were members of the workers' compensation system, there is a statute, workers' comp statute that requires if they're injured in the line of duty and during the period of time that all other public employees are injured in the line of duty, they must be given a certain amount of days of paid leave until the claim is dispensed with. So we have no such language in the city charter for fire and police. So what happens is if a

**February 11, 2004**

firefighter or police officer is injured in the line of duty, there's this -- if it's a completely legitimate claim, there's no concern about whether it's an appropriate claim or not, there's this lag time between when the injury happens and when the fpd&r receive the claim and when it's approved. And that lag time typically is filled by a firefighter or police officer not wanting to go on an unpaid leave status. So they use their own sick leave at 100%. So if they work 10 hours a day and they're sick for that 10 hours, and actually injured, they get 10 hours of sick leave. The problem arose back in 1989 when the voters changed the charter and we used to pay firefighters and police officers 100% of their pay tax free. Those of us that were involved in changing the charter thought that was unfair, because the actual amount that you receive in your check would be something more like 75%. So the disability payments since 1989 have been 75% tax free. The sick leave they use at 100%, which is taxed. For some reason, I don't -- i'm not quite clear, we got into the business of -- a member uses 10 hours of sick leave, we reimburse them 7 1/2 hours. It's -- in my view, patently unfair. We need to reimburse them after their claim is approved for the amount of time that they used, and so I will be offering an amendment to make it retroactive.

**Katz:** Let me just -- I want to poke on the retroactivity, because I think the issue before us is a legitimate one, and we should support the ordinance. Talk to me about retroactivity and what's the impact of going back to July 1, 2002?

**Kanwit:** The fiscal impact would be for the police bureau it's just over \$38,000, and for the fire bureau just over \$28,000. And that was information provided by the board. Now, the actual cost is dependent of course on sick leave that might be actually used. So it isn't a matter of paying out that money, that's the potential cost to the bureau of going retroactive, because what they would be doing is placing the additional sick leave or vacation, it's any paid leave that's used, at the 100% level. So the cost comes in when the member actually uses that time. And leaves city employment.

**Katz:** Why are you uncomfortable about that?

**Kanwit:** For really the two reasons I stated, mayor.

**Katz:** Say them again.

**Kanwit:** Sure. No problem. One is that we view that date as somewhat arbitrary, generally when we present ordinances we present them to be effective the date passed by council. Unless there is some certain reason we have for making them retroactive. As we have, for example with a nonrepresented compensation study, where we started at a certain point and it took some time to bring it forward to council. This issue we have a mixed practice. As commissioner Leonard said, it's been many, many years where the city's had the practice of reimbursing at 75% as opposed to 100%, and we apparently have a mixed practice between the police bureau and the fire bureau. So that date of July 2002 is really keyed, my understanding, is to the date that the Portland police association states that that was the change in the practice in the police bureau to go back to 75% reimbursement. They had been I guess for some time reimbursing at 100%, but were informed by essential payroll that the mechanism by which they were doing that was not appropriate, plus it was contrary to what the city's practice had been. The second reason just relates to the fact that there are a number of members, not all, who have had claims back to July 2002 who have retained the disability checks that they were provided, which cover the same period of time they use to paid leave. I'm not stating the checks were cashed, but they have been retained, which is -- amounts to a double payment, because we have given them the checks, they were already paid for the city --

**Katz:** And are we going after those checks?

**Kanwit:** We apparently have not. Yet. But we will. We certainly will.

**Katz:** How many are we talking about?

**Kanwit:** I counted up the number, mayor, and I don't remember. I think it's about 20. But that's a guesstimate. From the information that was provided to me by the fund.

**February 11, 2004**

**Katz:** And we are able to go after and collect that?

**Kanwit:** Yes. And we certainly will, and the -- although we have the rule already in place, concerning double payment, this administration administrative rule reiterates that obligation on the part of the member to turn the check over, one, in order to be reimbursed at any level, and two, reiterates that the city, they either -- they can be subject to discipline for failing to do that and also that the city could take action to collect that money. So the rule does reiterate the requirements that are already in effect.

**Francesconi:** Just one question. Has there been an attempt to settle this issue on the retroactivity for a compromise on both parties' part as to how much money should be paid since the date is arbitrary?

**Kanwit:** No, commissioner. We have not. The discussions i've had with -- and really it's just been with the Portland police association, with leo painten, my understanding is that the grievances were filed in july of 2002 because that was the date the police bureau changed its practice to come in conformance with what the city's practice had been at 75%. But we did not talk about picking some different date for the ordinance. What I did talk to them about as I stated, is an -- actually received written confirmation that if the ordinance is -- if council amends the ordinance to make it retroactive, the Portland police association would withdraw all the outstanding grievances concerning this issue. As far as the Portland firefighters association, my understanding was they had filed a lawsuit concerning the reimbursement level, it was dismissed as moot because they had according to my understanding, I was not involved in this, there were not really any injured members in the -- according to the court's opinion. But they have reserved their right to refile another lawsuit.

**Katz:** So let me just follow up. So the date of july 2002 does make some sense.

**Kanwit:** With respect to the police bureau. Not with respect to the fire bureau, because the practice was always 75%. But my understanding is with the police bureau, there was at -- they had for whatever reason, reimbursed at 100% until july of 2002.

**Katz:** I just want to make sure that the city is reimbursed for those who have been holding on to their checks. Because that's -- that is a double payment.

**Saltzman:** Does that responsibility to pursue reimbursement fall with the city attorney, bhr, or police and fire disability we're talking about?

**Kanwit:** It's --

**Leonard:** The fire chief and police chief.

**Kanwit:** It depends on where we are in the process. Part of this entire issue also surrounds for background the fire police and disability fund would -- used to -- they still do, they write the checks to both the member and to the city, which part of that of course then is difficult for the member to actually cash the check that the clear message is, this money really belongs to the city. The fund received a legal opinion from an outside law firm that based on the charter, they could no longer do that. That's one of the reasons we've reiterated in this rule the requirement to reimburse the city with that -- when they receive that check that that check gets turned over to the city. My understanding is the fire bureau has long had an actual work rule in place requiring that. I think in the police bureau it's a relatively new as a work rule, but the double payments, that's always been prohibited by city charter and there's also a provision in the hr administrative rules that specifically not in this rule, another rule, that specifically prohibits the double payment. So initially it is the members' responsibility to turn that over. If they don't, then it would be up to the fire chief or the police chief or their designees to pursue that, and at some point we would go down a road of discipline and perhaps even initiate legal action to recover that. The point we initiate legal action it would be the city attorney's office. At the point they're considering discipline, they would do that in consultation with the bureau of human resources.

**February 11, 2004**

**Katz:** All right. I guess I want to be a little bit more specific in the response. I would like for you to work with either -- or both the chief police and the fire chief with a letter to those members telling them that this is what we expect them to do, and what the consequences are. And then i'd like somebody to file a -- follow up to make sure that they are reimbursing the city. I don't know what kind of a time you want to give them, but within a reasonable time they don't, then we may proceed with discipline.

**Kanwit:** All right, mayor, I will make sure that letter goes out and make sure I follow up with the bureaus on that issue.

**Katz:** Ok. Do you want to make your motion?

**Leonard:** I would move, does everybody have a copy of the amendment? Move to amend the motion -- first we have to move to accept the ordinance, and then i'll move --

**Katz:** No. We're going to amend the ordinance.

**Leonard:** We have to have the ordinance on the table before us before we can amend it?

**Moore:** No. We need to amend it first.

**Leonard:** I move to amend ordinance 127 with my proposed amendment dated february 11, 2004, it would amend subsection a by adding the following language -- administrative rule 6.14 shall be applied to service connected disability claims made on or after july 1, 2002.

**Katz:** I do hear a second?

**Sten:** Second.

**Katz:** All right. Ok. Roll call.

**bFrancesconi:** This is the right thing to do. Including the amendment. Just, I actually worked on the legislation on workers' compensation that benefits not be taken out if people are injured on the job. So we have to be consistent with our own police and firefighters. Aye.

**Leonard:** Are we voting on the amendment?

**Katz:** The amendment.

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

**Katz:** Mayor votes aye. I vote aye with all the conditions that you and I just discussed. Aye. [gavel pounded] all right.

**Leonard:** The ordinance?

**Katz:** Anybody else want to testify? Roll call.

**Francesconi:** Same thing I said before. Aye.

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

**Katz:** Mayor votes aye. [gavel pounded] thank you. 128.

**Item 128.**

**Katz:** All right. Do we have anybody here from maintenance?

**Moore:** They had no remonstrances.

**Katz:** Nobody here wants to testify? If not, we'll pass it on to second. Thank you, everybody. We adjourn until 2:00 this afternoon.

At 11:35 a.m., Council recessed.

February 11, 2004

FEBRUARY 11, 2004 2:00 PM

**Katz:** Karla, please call the roll. [ roll call ]

**Katz:** Commissioner Sten is excused because he didn't have time to listen to the record, nor would I recommend that he spend the time listening to it between feedings.

**Leonard:** Coward. [laughter]

**Saltzman:** Couldn't stay awake.

**Katz:** Let's read the item before us.

**Katz:** Ok. We have a substitute ordinance that is before us, and -- which we adopted last -- two weeks ago. Correct?

**Leonard:** Yes.

**Katz:** And we now have some amendments in the exhibit that is tied to the ordinance.

**Leonard:** Right.

**Katz:** So what I need is to have your staff to come up, because we've got folks here that may or may not have seen any of the amendments, and explain them. Then we'll vote on them, assuming they'll pass, then if you all can stand still for a week, then next week we can actually vote on this.

**Brent Canode, Commissioner Leonard's Office:** I'm going to start with exhibit a. Starting at the first piece purpose, general context, most of this language that's been adopted or will be adopted hopefully today has been put in here to mirror the o.r.s. language. So it's just cleaning up the verbiage and getting rid of some of the inconsistencies.

**Katz:** Why don't you identify for folks that are interested in this, what were the -- I know what they are, but I want to make sure everybody understands what were the inconsistencies in the o.r.s. that you now are complying with in our code.

**Canode:** How we refer to establishment and premise, and interpreting the o.r.s., the city attorney's office and -- have interpreted "served, furnished, and provide alcohol. That's been included in the definition session of this ordinance to be very clear about what we're referring to.

**Leonard:** Shall we have ben come up here with you at the same time?

**Katz:** Ok.

**Canode:** Most of the time it's just premise is struck and establishment is replaced.

**Katz:** Does anybody have a question with regard to the definitions on exhibit a?

**Leonard:** And these are the only changes, and they are minor, so are we even -- even though they are minor are we required to wait a week?

**Katz:** Yeah. They're not minor. They're changes. Ok. Let me ask you, the implication of those changes, then, are -- from what we did two weeks ago. The net result of it.

**Ben Walters, City Attorney's Office:** Ben walters with the city attorney's office. There was testimony at the last hearing that the ordinance was at variance with the language that was otherwise in the authorizing statute, and that that somehow created a conflict with the authority that was given to the city council by o.r.s. 471.164, and so in order to clarify the council was exercising that delegation of authority from the state legislature, and -- to clear up any confusion about what was intended to be -- what was intended to be covered and what was not, and to avoid unnecessary conflicts. We've gone through -- there are some other changes, this is one of them, but within the definitions we're using the statutory terms of establishment as opposed to licensed premise, which is also a statutory term, but it's not the statutory term used within the authorizing statute, o.r.s. 471.164.

**Katz:** You mentioned another one, which was it?

**Walters:** That's "served." there's a question about the meaning of "serve" and whether it encompassed sale or not. To the extent the authorizing statute using that term and it also authors

February 11, 2004

the city -- authorizes the city council to adopt an ordinance this, is to establish what the council's intent is in terms of the scope of the language.

**Katz:** Ok. Thank you.

**Canode:** The next significant change is under 14-b, 120.on you fore 0 under "notice." subsection b, there was -- after a meeting there was a concern that we weren't notifying the establishments when there was a complaint that came in. We were just notifying them after three had been verified. Under this section we'll send a letter to the establishment once we have a verified complaint, just letting them know there's been a complaint so they can deal with it proactively instead of having to wait for three complaints and the process kicks in.

**Katz:** Did you increase the days to 10, or is that --

**Canode:** It's always been 10.

**Katz:** That's what I thought. All right. Anything else?

**Canode:** Not on that piece.

**Katz:** All right. Is there anybody that signed up?

**Leonard:** I asked my office asked pam erickson, former director of the olcc to come, so if pam could come forward.

**Katz:** Any --

**Canode:** There is one more significant change that I should mention. We actually -- based on olcc's testimony, under the remedy section of the ordinance, we removed the remedy that allowed us to limit the hours of sale of alcohol. We still could limit the hours of operation, but we can't limit the hours of sale. So we've left the hours of operation in, but we removed the language that said we could effectively limit -- it's a semantic piece, but it's a legal piece.

**Katz:** So you could -- it's a very important one. That's not insignificant. So you could or you could not limit as part of the remedy, say, that you're going have to stop alcohol sales at 1:00.

**Canode:** Correct. We could not say that. We could say instead that your establishment will close at 1:00.

**Katz:** Ah.

**Saltzman:** Why did we do this? What was the reason for this change?

**Canode:** After olcc's testimony last week, it was determined that that was legal authority, was to limit the hours of operation that we could be overridden if it was limiting the hours of sale of alcohol.

**Katz:** So that was the issue -- the question that was asked, if we write it one way, one directive to the operator and olcc has another directive, which overrides it -- go ahead.

**Walters:** That's correct. It's in part to respond to the question of, what we control under those circumstances, the licensing authority as provided by the olcc, or the city council's authority under the statute to regulate the hours of service, the operation of the establishment. And so to avoid that particular question coming up, it's been -- depending on your perspective, either narrowed or broadened. Narrowed in the sense that it avoids the question directly of the regulating the hours of sale of alcohol, but broadening in the sense it covers the hours of the operation of the establishment, which is perhaps more significant.

**Francesconi:** Do we have legal authority to shut down an establishment earlier so as to avoid -- force them to stop selling alcohol?

**Walters:** Well, I -- that will depend upon how the courts interpret the statute. Reading the statute it would seem clear that the ability to regulate the time, place, and manner of the operation of an establishment, this would -- this is the regulating the hours of the operation of an establishment. But whether I can sense the statute hasn't been implemented before and -- we think there's a fairly strong case to be made for, yes, this is a reasonable interpretation of the statute.

**Francesconi:** Ok. Thanks.

February 11, 2004

**Katz:** That's it? Ok. Go ahead.

**Pamela Erickson:** Mayor, members of the council, my name is Pamela Erickson, I am the director for the coalition for -- to reduce underage drinking, but prior to that I spent seven years as the director of the Oregon liquor control commission. While I was at the commission, I encouraged several local governments to use this statute, including the city of Portland. Because I thought as a practical matter, the olcc just doesn't have the resources to deal with all the problems that occur in licensed establishments. And it would -- I viewed it as a nice partnership where cities would step up to the plate and deal with some of their own neighborhood issues, thereby freeing the olcc resources to deal with other things. As a practical matter, when I was at olcc, we tried to put our resources into the really serious problems, and as a result, it was usually after several months of a lot of problems before we really were able to step in and take some action. So I think this is -- I think this is a good thing, and I would hope that you could work in partnership with the olcc on problems like this. The other reason I think it is a good idea is that as -- because our land use laws encourage density and mixed use, this is -- these kinds of neighborhood problems are going to become more and more of an issue. And it has reached the time where you need to have an effective tool to deal with it. You need a way to go in to a place and stop things early on. Until they really get out of hand. Programs that encourage people from the outset to be good neighbors, to do things that are going to keep control of their clientele population, from the outset, are always better than trying to argue over whether they violated a statute or not way down the road. So I think from that perspective, it's a good idea. Oregon does not have a statutory basis for limiting licenses at the present time. The olcc has the power to do that, but it would need to have a rule to effectuate that kind of authority. Over time the number of licensed establishments have gone up and up, and that's been driven by the economy, by the change in Oregon's economy to a large tourist industry in the early 1980's we didn't have much of a tourist industry. We now do, we need a lot of licensed establishments to support a tourist industry. The other thing that's happened is people are eating out more and more. I've heard that something like 40% of a family's food budget is eating out. And it's fairly standard for restaurants to have alcohol available. And of course since we live in Oregon, we like our Oregon wines and our Oregon microbreweries to be available for sale. So it's important to balance all these factors. But I do think that this is a very reasonable way of doing -- I've looked at the ordinance, I think it's pretty reasonable. I think a lot of the fears are sometimes you can have one or two kind of crazed neighbors that create an uproar. Sometimes you have a neighbor who is really the -- you have a neighbor who is the tavern down the street who doesn't want the additional competition. So it's important to deal with facts and to really make sure that you have a real issue here instead of perhaps a competition issue, or something else. But all in all, I think it's -- it's important to have these kinds of tools to deal with these kinds of issues in your increasingly dense urban communities.

**Katz:** Thank you, Pam. All right. We have a relatively narrow issue in front of us now that that's why I wanted Brad to clearly explain to everybody what the issues were. So if anybody wants to testify on these amendments, please keep them as narrow as possible, don't start from the very beginning, because those decisions were made two weeks ago.

**Leonard:** I wanted, before we did that, thank Pam for coming and giving testimony. Thank you.

**Kathryn Beaumont:** Before you accept testimony, do you want to move substitution of exhibits a and b so people are testifying to those exhibits? That will simply place them before you.

**Katz:** Yeah, we can do that. All right, I'll take a motion.

**Leonard:** I move exhibits a and b.

**Francesconi:** Second.

**Katz:** Any objections? Hearing none, so ordered. [gavel pounded] ok. Why don't you go ahead and start.

**February 11, 2004**

**Jay Shornstein:** Good afternoon. My name is jay sorenstein. I live on 48th avenue south of hawthorne. I'd like to suggest the council support this ordinance and adopt it. It will give additional tools to individuals in residential areas to combat disturbances emanating from establishments that serve and sell liquor. Currently many residents have little additional means to address grievances. I've witnessed in my neighborhood in the last several years i've witnessed fights occurring late at night from individuals coming out of these establishments, drunken individuals lying in front of my house, beer cans and bottles on the streets. Last summer we had a rash of firecrackers being shot off like every three nights in a row, every week for six, seven-week period, 2:00, 3:00 in the morning. I found firecrackers all over the parking areas, a lot of these alcohol establishments. I've also witnessed noise emanating from inside establishments when they've left their doors open. Patrons yelling as they exit the establishments. This is at 2:00, 3:00 in the morning, to get in their vehicles. And cars traveling much too fast late at night down our neighborhood streets. So I would strongly encourage the council to adopt this resolution. Notwithstanding this, I suggest that the council also look at the 30-day period that's set forth in section 14-b.120.030, and I believe that this section should be changed to 60 days. A 30-day period is really too small a window to address a series of ongoing but noncontinuous disturbances at an establishment. Secondly I feel council at perhaps some future date should seek some further adoptions to this ordinance to address disturbances which might be emanating from any one of multiple liquor establishments that are located in close proximity. And again, I thank you for listening to me.

**Katz:** Let me just comment on the 30 days, it's parallels the chronic nuisance ordinance that we have. That's the reason to parallel it. I just -- I just want -- I want maybe to lower some of your expectations, and I think you understand, because unless you can really make that connection between the establishment and the nuisance, you don't have a case.

**Shornstein:** I understand that.

**Katz:** I know you -- because you made that last remark. And in the case that I offered the first time we heard this testimony, unless -- I left the house in my nightgown or pajamas at 2:30 in the morning and watched what was going on at the establishments and then followed everybody, I -- all I have is a complaint and no case. So that's -- I just wanted to lower it a little bit.

**Shornstein:** I understand that. I understand that.

**Katz:** Ok.

**Shornstein:** Thank you.

**Linda Nettekoven:** I just wanted to make clear, I wanted to --

**Katz:** Identify yourself.

**Nettekoven:** I wanted to know first if you want to hear my comments, they're in regard to comments others made at the last --

**Katz:** Make it brief. You've been here now every time we've heard this. So go ahead.

**Nettekoven:** Linda Nettekoven, 2018 southeast ladd avenue in Portland. As I indicated before, i'm a member of the hosford abernethy neighborhood association and not speaking on their behalf, but have worked with liquor licenses in my community. The things I wanted to respond to from last week have to do with first of all the role of olcc in this. I wanted to point out that our neighborhood, maybe we live in some brigadoon or something, but we have had a wonderful working relationship with olcc staff during the past several years, both arms of the agency, those that investigate before the licenses issue and those that investigate the complaints afterward. Even with that, and with olcc working well with the city staff, things went on for many months of sleepless nights for neighbors, and there was no recourse. In one instance it took someone being killed outside the bar before there was actually a chance for the license to change hands and the change of ownership. That brings me to my other issue, which is the continual change of

February 11, 2004

ownership. I can point to two places in my neighborhood that have changed hands three times in the five years i've been at my address, and then that doesn't speak to the issue of as pam's indicating, there are more and more establishments opening, and what we -- at some point we need to discuss further the issue of saturation. This doesn't begin to address that, but at least we're making some headway in addressing neighbors' concerns. Third, I want to reemphasize that I really think this is an asset for business. I don't quite understand why people are so frightened of something that would affect only a handful of businesses in the community. We as a neighborhood association from the other side have problems with again, that unreasonable neighbor, we're looking forward to the extra staff support in terms of trying to work out these issues and difficulties when they happen. It's seems to me this ordinance provides a protection and a clearly defined safe process for a business owner to go through as opposed to perhaps being harangued by neighbors who have no set path to follow. So I want to urge adoption of the ordinance. Thank you.

**Katz:** Thank you.

**Ivan Farber:** Mayor and commissioners, i'm ivan farber, I live on southeast 48th, on the same street as jay. I'm here pretty much in testimony for the order, and for probably the 200 or so neighbors that also are disturbed during the summer months between 4:00 and -- between four and five nights a week on a very unpredictable fashion. Last august my wife was nine months pregnant and I went outside to -- because we were awoken for the third night in a row at 3:00 in the morning, and I went and talked to what is in the parking lot, so I know this ordinance might be on the establishments, and I guess i'm encouraging the ordinance to be the parking lot as well, I don't know if that is something that is even able to be added at this time, but I live across the parking lot from the bright spot and the space room, and pretty much any night that people are drinking at the bog, the space room, or the mt. Tabor, when they have a particularly good concert, I know about it because when everybody leaves, that's when I know about it, but I went out there and there were people that had been drinking, and then the bars were closed, but they were just there, car door open, radio blaring and I went on out and talked to them and said please leave, my wife is pregnant, we need sleep. I had to go back out 20 minutes later when they started yelling expletives and throwing things at me, a full beer can. So for the people that are not here today and the people that don't speak up, they don't call the noise line, they don't call 9-1-1, i'm here because they're not, and I took the time to be here because this is a real issue. And I really appreciate your taking this on. Thank you.

**Katz:** Thank you. Ok.

**Katz:** Mike, go ahead.

**Mike Reed:** Thank you. Madam mayor, members of council, my name is mike reed, i'm here as an attorney representing the korean american groceries association. I have a couple of questions for clarification i'd like to ask you, and then a couple of comments. A clarification, the reference to disorderly conduct as a nuisance activity would seem by the definition in the statute to include noise even when the noise doesn't violate a city ordinance. I want to make sure that's your intent by including the entire definition of disorderly conduct, because there's another provision that says noise that violates the city ordinance. This could be used as a way to boot strap any noise violation, the definition of noise being intentionally making noise that annoys someone. Second clarification is that, section 14 b 120.030b means that nuisance activity can have absolutely nothing to do with the sale or service of alcohol. I don't know if that was your intent, but the upshot is that is a person walks out of after store and throws a candy wrapper on the ground it's a nuisance activity. It also has no distance limitation, so that if someone bought a bottle of orange juice and a pastry at fred meyer and five miles away threw it out their window along with the bag and receipt, that goes on the record of fred meyer. I don't know if those are the intent of the council, but that is how broadly it's written at the present time. And the third clarification is in 14 b 120.060, requiring the chief of

**February 11, 2004**

police or the director to make a determination that three nuisance activities have on occurred, I was told by someone on your staff there was a process for making that determination. You're not going to rely on the same three reasonable suspicion factors, but there would be some determination that the activities have occurred, but I don't see anything in the ordinance that sets out any kind of process for making that determination. I'm curious how that would happen and whether that should be included in the ordinance or not. I would appreciate a clarification of your intent there.

**Katz:** We'll do all of that at the very end.

**Reed:** Thank you. And my two comments on the policy of this, the clarification of the scope of the language to try to define serve to include sell cannot be made in a way that violates or ignores the intent of the legislature. The legislature knew the difference between sell and serve I think if you look through the liquor control act you'll see references to that. Look under o.r.s. 470 -- 471 and others, the privilege of selling the -- a convenience store or grocery store, they're licensed privilege allows them to sell, not to serve. So I suggest that your city attorney needs to review this more carefully, because I don't think the clarification -- the purported clarification can get around the intent of the legislature here. And finally, as a matter of policy, other than to avoid the conflict with the preemption statute, why would you limit the hours of operation rather than the hours of alcohol service, when the entire thrust and purpose of the ordinance involves the regulation of the sale of alcohol? You would be punishing a business unnecessarily by closing the entire business because there are a couple of complaints that are associated only with alcohol. This may be a he -- may be illegal, but it certainly is bad policy. Thank you.

**Frank Dixon:** Good afternoon, council, frank dixon, president of the northwest district association, 2205 northwest johnson, Portland. I bring greetings from vibrant and sunny 23rd street, and want to say that our neighborhood friendly 21st street restaurants and bars stayed open every day during the snowstorm and everybody that could walk there, and there were quite a few, stayed warm, happy, and fed. I'll respect the mayor's call that we not speak to everything here before us, and limit my remarks very narrowly to the section that deals with the change in the definitions that pulls in convenience stores. Except to say the nwda board is generally supportive of this except for a portion i'll get to in a second. The concern in question involved the layers of process that we have to go through if we have a convenience store, for instance, that is shown without question by the judgment of the chief of police or the oni director to have a serious problem after 3:00 -- after three complaints. As I read that, that would only push convenience store out of the responsible neighbor program if they were in that, and then they would have to have been observed to have an additional three complaints within 30 days in which case they would have to go through an abatement process, and then if they either failed to go through the abatement process on or then had three additional violations, then they could be subject to some restrictions per a code hearings officer. What I see is a lot of process to get neighbors to appoint where they're going to realize some expectation that this ordinance will be effective. Having said that and having known that the alcohol industry has stripped neighborhood protections from the statutes on more than one occasion, including the ones that the nwda sponsored in 1988, I think it's worth a try. So thank you.

**Katz:** Thank you.

**Jason Graf:** Hello, my name is jason graf, i'm the chair of the boise neighborhood association. I'm here to talk about whether the ordinance is reasonable or not, and how it impact neighborhoods. The question of the time, place, and manner is whether it's reasonable and whether it works to strengthen existing programs instead of reciting a -- recreating the wheel. I think this improves access and strengthens the process for neighbors and association leaders to voice concerns regarding establishments in our neighbors neighborhoods. In particular it strengthens three existing o.n.i. Programs that one, provide information through notification, the notification process for new alcohol related businesses, two, it establishes relationships through the croatian of the good

**February 11, 2004**

neighborhood agreement, and three, it provides a direct link to enforcement for neighbors through identification of the problem establishments, and documentation of specific activities that are occurring through the crime prevention specialist. So in my opinion, as a neighbor and who deals with problems on a weekly and monthly basis, it is reasonable this ordinance, and it allows the opportunity to create relationships between businesses and neighbors and in resolving problems before they become too excessive, but has enough teeth to enforce. Thank you.

**Katz:** Thank you.

**Katz:** Anybody else who didn't sign up that wants to testify? Ok.

**Pam Arden:** Pam arden, 1817 north winchel. I've been reading and following this in the newspapers, haven't had a chance to come down and testify previous to this. I'm very happy to see this come forward. I guess i'm one of those crazed neighbors that had to really work hard to get an establishment to toe the line and finally get closed, and we did have a number of people who stayed out all night to monitor their situations, so we could document what was happening in the neighborhood so that we could get an establishment to toe the line and eventually they ended up closing. So I think this is a marvelous tool for the neighbors, and we need to have the neighbors be part of the enforcement piece by being the eyes on the street. And I know we can't say, ok, I think I heard something happening at that place, we have to document it. That puts the own us on us to be part of the process. But I think this adds teeth for us, because the nuisance ordinance after our club routine, we came back and tried to strengthen the nuisance ordinance, and so this takes it one more step and helps us out on that neighborhood level. I appreciate it, and ask for your support of the amendments. Thank you.

**Katz:** Thank you.

**Susan Pierce:** Hi, i'm susan pierce, i'm a member of the hosford neighborhood association, and I am for that group the good neighbor agreement committee chair. I'm also a member of the noise control board and a member of the earlier noise control task force. I don't speak for any of those bodies, I speak as an individual, but from the experience of being on those. I just -- i'm so familiar with the problems -- residents that the city of Portland have with noise, late-night noise coming from establishments. I hear it coming from all sides in my capacities on those committees and I just think -- I agree with the previous speakers, that this is a reasonable way for the residents of the city of Portland to have some control over the livability of the neighborhood in a way that they haven't had before. I don't think -- I think that the -- in terms of the liquor control or the -- and the restaurant business, it seems to me that in some ways it can only be good for them because those businesses that are a good neighbor have that added cache of working with the neighbors. And it helps to weed out the bad apples, the very few apples within that big barrel. I emailed you a letter prior to the last hearing, since I was going to be out of town at that point, and i'm not going to repeat everything in that letter, because it all stands. I just wanted to report this.

**Katz:** Thank you. All right. Do you want to respond to some of the questions that were raised with regard to the ordinance and the exhibit that followed it?

**Leonard:** Ben too.

**Katz:** Ben, i'm sorry. The one I recall is the noise which is in -- go ahead. There were others.

**Canode:** Mr. Reed's concern. Last week we -- two weeks ago when we folded the patron noise issue into disorderly conduct, because our definition was pretty loose, and we determined that was the best way to address that, and inserted the amplified ordinance, noise statute, ordinance language in its place, so we addressed both noise issues, amplified is dealt with, explicitly and disorderly conduct, patron noise is addressed.

**Saltzman:** Is it tied into our noise standards?

**Canode:** The amplified is connected to the noise ordinance, and disorderly conduct covers patron noise.

February 11, 2004

\*\*\*\*\*: The disorderly --

**Katz:** Operation of -- go ahead.

**Walters:** The disorderly -- ben walters, city attorney's office. The definition within the ordinance, the proposed code language, the definition of disorderly conduct is tied to the statute. And mr. Reed is correct, there is a provision within the range of activity that can subject a person to the criminal violation of disorderly conduct, is making unreasonable noise. But it's limited to the person making noise as the statute's written. It's distinguished from the other noise provision that's in the proposed code, which is the operation of sound producing equipment, which is a code violation, and that's amplified noise. It doesn't apply to what would be patron noise. It would be playing the stereo too loud. That would be the sound producing equipment. So we did try and respond in part to the prior criticisms. This again occurred two weeks ago. It's not a change as of today's ordinance language, but we did try and respond to the concerns about the language overlapping before. I'm not so sure that it does overlap now.

**Katz:** Do you remember the other items mr. Reed raised?

**Canode:** I think one of them was a boundary issue of somebody -- if somebody littered blocks away that it could be tied back to the establishment. I'm going to let ben interpret that.

**Walters:** The way that a violation is defined, it has to be related to or arising out of an establishment, and if we were faced with the notion of going to the code hearings officer and trying to prove a nuisance violation on the basis of litter that occurred five miles away, I would want to confer with the client before that case was moved forward. In other words, I think it would be a stretch, and I would recommend against that. I think that's a rather attenuated argument. I don't think that would be -- that would apply under these circumstances.

**Katz:** There was one more item that mr. Reed mentioned. Do you recall it?

**Canode:** It had to do with definition of serve.

**Walters:** And on that, mr. Reed raises an interesting question, 471.164 is in the liquor control statute, but if you go back to and trace the legislative history, 471.164 was actually adopted outside of the liquor control regulations. It was part of a statute that was enacted in 1989 as sponsored by representative bowman, and that legislation was primarily addressed chronic nuisances. And it was part of that legislation, it was legislative council in cod identifying this provision that put it into o.r.s. 471, so I think it's a subject of debate as to whether you read the language in 471.164 as being controlled by the liquor control statute, or whether you just read it according to its plain ordinary meaning. And our office believes that it would be read according to its plain, ordinary meaning, and that the definition that it's included there now is a definition that is found in the dictionary, and is a reasonable interpretation of that statutory term. So, in other words -- we believe --

**Saltzman:** That's serving --

**Walters:** Yes.

**Saltzman:** You can find that in the dictionary?

**Walters:** Yes. You can find that in the dictionary.

**Saltzman:** And those o.r.s. 147 -- 471.164 was passed as part of a general nuisance legislation and happened to be codified by legislative council?

**Walters:** Yes. That's not uncommon, that --

**Katz:** They do that all the time.

**Walters:** They'll have a provision that's included in the a statute that doesn't identify where it's to be put in the o.r.s., and it's then left to the discretion of legislative council. That choice does not then determine what the legislature intended by the statute. In other words, legislative council is not elevated to sort of a super new numerary in terms of identifying what the legislative intent was. That's not the process that the courts -- in terms of how they interpret the statutes.

**Katz:** You tell them that next time.

**February 11, 2004**

**Saltzman:** Sounds like he will be probably at some point.

**Canode:** There was one more question, mr. Reed referenced a conversation with myself that there was a process to substantiate complaints and he didn't see that in the ordinance, because it's in the administrative rules and i'll be sure a copy is delivered. It spells out the procedure.

**Katz:** Anybody else have any questions?

**Leonard:** I just wanted to thank pam erickson for coming. She said in her remarks I noted something I had said earlier, which was this ordinance becomes important because of our increased density, urban growth boundary, which a lot of us believe, causes more people to move in a fixed area which causes these kinds of tools to become necessary. And I really believe that for the good intentioned retail outlets, restaurants, bars, taverns, they will not know this ordinance passed. There are a -- as has been said, a number of times, there are a handful of places around the city that probably should be concerned that it's going to pass. Because it is intended to be a tool to address at least one of the issues I heard testified to here today, and some others, that I think are important tools for us to have. All that said, that needs to be balanced as frank dixon said, there is some process involved, but there is intended to be to make sure there's a balanced approach to dealing with misbehaving liquor establishments. And it was intended to be that way. Thank you.

**Katz:** Ok. So we now have an amended substitute ordinance, and we will vote on it next week, and I want to thank randy, I want to thank you for taking two weeks and allowing some other groups who felt that they needed a little bit more access to your office and to your staff, and I appreciate that. We're going to vote on it next week, and I want to thank everybody that's been with us through this, and i'll -- we'll see each other next week if you want to come back. We stand adjourned. [gavel pounded]

At 2:44 p.m., Council recessed.

February 12, 2004

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

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

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

**FEBRUARY 12, 2004      2:00 PM**

**Katz:** Good afternoon, everybody. The council will come to order. Karla, please call the roll.

**Francesconi:** Here. **Leonard:** Here -- **Sten:** Here.

**Katz:** Mayor's present. Why don't we read the item.

**Item 130.**

**Katz:** Before I set some ground rules based on the last meeting, I need to turn to our city attorney first.

**Linly Rees, Deputy City Attorney:** For those present, I want to remind them that as a continued hearing, therefore we won't be reading the long list of preconditions that we normally do, but I do want to remind everybody, since it's been a couple months of a couple of things. First, the council, with the consent of the parties, decided at a prior hearing on this matter, to allow the applicant to revise the design and present additional evidence regarding that design and to allow participants to testify and present evidence about the revised design. The record was opened only for this purpose.

I would like also to remind those presenting testimony today that one, any testimony in evidence you present must be directed toward the applicable approval criteria or any other criteria in the plan or land use regulations which you believe apply to the decision and that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and parties an opportunity to respond to the issues precludes appeal to the land use board of appeals based on this issue.

**Katz:** Ok. Let's go back and answer the following question. Were there any ex parte contacts between the time that we left this issue off and today?

**Francesconi:** I've received several emails. My staff assistant, michael harrison, has visited the site. I've been by the site. He's spoken with residents. I had a brief 30-second conversation with not any -- sorry -- with marianne schwab when we were at -- michael's had more detailed conversations, but hasn't shared those with me.

**Katz:** Did any of that information taint your perspective on this issue?

**Francesconi:** No, it hasn't.

**Katz:** All right. Anybody else? I read emails, had conversations with my staff person, primarily on the board issues, which is not an issue today, and I want to get to that in a minute. And of course, since I asked for help with the design, I kept asking how's it going, and that was about it. So as ex parte as that can be, and it certainly did not -- did not influence me at all. Ex parte? None, ok. I'm going to turn -- karla, you had some issues you needed to clarify.

**Moore:** We've 13 letters here that are available for review.

**Katz:** All right. Before I turn to staff, let me be very clear that I know there's conflict with regard to how the board voted and whether the neighborhood association supports this or not. It's not the issue. The issue, and only the issue that we're dealing with today, is the design of the facility. The council felt very strongly, and I think it was unanimous at that time, that they wanted some intervention to make some improvements on the design, to reduce the sense of bulk and make it more compatible with the neighborhood to the extent that you can without cutting units and making this not a feasible project. I think that was the sense of the council. And that was the reason that I

February 12, 2004

came up with the notion of sending our -- the city's first urban design or two, and almost -- an almost impossible task, to try to deal with this issue and come in at it at a much later time in the whole discussion. And we'll hear from at some point about that after the staff report. That's where we are. Nothing else. I'll cut you off, because it's not relevant. Now, the first decision that the city council will make is the design decision. The city council is pleased with this and ready to move forward. Then we'll take the other modifications to the hearing officer and the other land use issues that we need to cover, and I'll have staff walk us through that. And that's in this document that you have from Kathleen Stokes to your assistants. Ok? Everybody understand that? Anybody have a problem with that?

**Kathleen Stokes, Bureau of Development Services:** Thank you, your honor. I'm just going to give a little recap on what has happened since the last time --

**Katz:** Identify yourself.

**Stokes:** Kathleen Stokes, staff for Bureau of Development Services. And since we were last at council with this, as the mayor said, she offered the services of our urban design specialist to the applicants to try to address the neighbors' concerns. ONI also offered the services of a mediator, Mr. Jain, and the mediator and myself met with the neighbors, and summarized, pulled together, their concrete observations of their concerns with the design. Then Mr. Jain and I met with the applicant -- with the architects to convey those concerns in design terms and Mr. Jain gave some suggestions to the -- to the architects about how they could address these issues of mass and bulk and redesign of the building. The applicants had given the architects permission to completely approach the design from a new, fresh perspective. The result is that parking has been placed in -- underground. The building itself has been reconfigured, including internal working of the building, so that it's now grouped in modules that are intended to reflect the rhythm of the single dwelling development around it where there are sort of modules with larger spaces in between where the building wall is deeply articulated to approximate the side setbacks and single dwelling development around it. As a result of this configuration, the overall building coverage is somewhat decreased from the original proposals. The setbacks are greatly increased, and there's no longer a request for any setback adjustment, but the height of the buildings have increased, and there are two places that are conjoined in the roof line, approximately the center of the building on two facades where in one point, which is the highest point, the measure of the roof is at 35.65 feet, and on the adjoining roof line it's at 39.89 feet, so an adjustment to the height standard has been added to the request and the request for setback adjustments has gone away. There's still a request for an adjustment to the screening for the loading area, which has been there from the beginning, that request. As the design was progressing, the architect was able to put drawings on to Marquis Cares' website for neighbors to view and comment on. There have been several meetings with the neighborhood, both with the land use committee and with the board. On January 27 the board issued a qualified resolution in support of the current design, and this model that you see in front of you has been the latest presentation of that design. There hasn't really been any change in the model, it was just created so that people could better visualize it in a three-dimensional way. I'm going to let the applicants and their architects, when it's their turn to testify, explain the design modifications in more detail. And I think Mr. Jain will also do a little bit of explanation of that. Thank you.

**Katz:** Yeah. Is there a particular reason you put the design on this table as opposed to the big table? No? Why don't you move it so everybody can see it, otherwise we're the only ones privy to it. You can move --

**Barry Smith:** I didn't know if I was allowed to use your table.

**Katz:** Of course. Ok. Were you finished?

**Stokes:** No. I thought you wanted me to come back up. I'm sorry.

February 12, 2004

**Katz:** No. I wanted Arun -- are you finished?

**Stokes:** Yes.

**Katz:** Ok. Arun, why don't you come up, and share with us your sense of kind of the environment on all of this and the result of all of this, and your perception of all of this.

**Arun Jain, Bureau of Planning:** Sure. My name is arun jain, the chief designer, work out of the bureau of planning. My charge, as I understand it, was really strictly with the confines of looking at the architecture, as the mayor just suggested, look at how the existing development program could be accommodated to be more compatible with the neighborhood around it. I met with the community, got from them the sense of what the architectural concerns were, and it was limited to that, not whether this is an appropriate use for the site or the number of units as appropriate, but strictly the architectural quality of the building. We did discuss at length what could be done from an architectural point of view to make the architectural form to be more compatible with the neighborhood. We talked about breaking down the masses, articulating the facades, doing the setbacks between the buildings, so that the corridors recede all the way to the back as you can see in the model. There have been several the iterations to that particular concept, and the largest success is that the building does not look monolithic anymore. It's not an alien imposition on the environment. That's not to suggest that there aren't further improvements that can't be done. I think it is a tremendous improvement over what previously was being proposed.

**Katz:** Questions of arun? Ok.

**Leonard:** The model is to scale, so we see the relationship to the surrounding structures is as we see it?

**Jain:** That's my understanding, yes.

**Katz:** Ok. Did you have another question? All right, let's have the applicant come up and share with us in terms -- the applicant and the architect and the --

**Tim Ramis:** Mayor Katz, members of the council. On behalf of the applicant, tim ramis, northwest hoyt in Portland, here today on behalf of the applicant. Today's hearing is about design, and so most of our time will be spent discussing these matters with our architect, barry smith, phil fogg, a principal with the applicant is also with me here today. We'd like to express our thanks to the staff and to the city for the truly impressive array of assistance that they brought to this situation, both from the neighborhood association level and also arun's assistance. It was very much appreciated. We also appreciate the neighborhood's participation and the suggestion from its leadership early on that we take a look at the bishop morris project in northwest Portland, because it suggested some directions that I think influenced the design. We come here today with a design which is supported by a resolution of the actual appellant case, the sunnyside neighborhood association. We also have concluded negotiation of a good neighborhood agreement. The neighborhood has submitted to us a form of agreement, and we're prepared to sign it in the form in which it now appears. We understand that their board still needs to take formal action on it. The neighborhood's resolution in support of our application -- or of this design raised three matters that directly concerned design. You'll hear those. We will speak to those today. Briefly they are shadow, as it's cast on a --

**Katz:** Before you --

**Ramis:** Yes?

**Katz:** There's some conversation about the fact that there was notification that was sent out that would allow the appellants to go first. That's ludicrous. You want to hear about what the changes were and then you'll come first in terms of the testimony. So all you're going to hear now, I want to hear the changes --

**\*\*\*\*\*:** Right.

February 12, 2004

**Katz:** -- of what you did and what the end result is so that everybody in the audience understands this. Then we'll have the appellants come up. I think that makes a lot more sense. Now, I didn't see the notice. If you have the notice I'd like to follow the notice and make sure that we give -- whether, you know, there's rebuttal, no rebuttal, how we can run this, because we can run this differently. This is the second hearing. Ok, it's the normal.

**Moore:** Right.

**Katz:** Ok, go ahead.

**Ramis:** All right, thank you. Issue one was shadow being cast on a single-family home, which is on the same block. You will see exhibits that illustrate the degree of shadow that this project would cast as compared to what would be permitted by a single-family house in the same location. And you can draw your conclusions from it. I think it will demonstrate that this project has less shadow impact than even a single-family house could have. Second is parking lot security and design. We've had that -- the workability of the lot reviewed by pdot, as we understand it, they don't have a problem with it, and we share the community's concern about security of the parking lot. We have residents there who will be very concerned about that, and we will be certainly dealing with that security directly. Finally, project quality. We've asked that our record include drawings that specify in writing, as well as in drawing form, the features of the design that are critical, and describe them, and we would ask that the council include in its decision, should you vote favorably, something similar to condition d from the hearings's officer decision, which specifically required the construction of the project to be as it was presented in the design. We're quite comfortable with that, and we will be building this project as it's presented. Thank you.

**Barry Smith:** My name is barry smith. I'm the architect working with marquis companies. My address is 620 southwest fifth avenue, suite 604, Portland, 97204. As arun and kathleen said, we took on a carte blanche approach to this. We said, ok, let's throw out all concerns about things like budget, constructibility and building codes and zoning codes, and let's pay attention to what the concerns were of the neighbors. We came up with a number of options, looking, you know, critically at where we could bring driveways in, what types of buildings we could do. You know we, looked at doing a highrise in the middle of the site. You know, what we came up with is similar

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**Francesconi:** Glad you didn't pick that one.

**Smith:** The highrise? Yeah. And we like the bishop morris house. What we did, though, was worked against the building type. Building types of this nature are housing blocks with central facilities, and we couldn't get the kind of sculpture qualities that we wanted by following the typical assisted living facility. What we were able to do was to pull out those elements, like the common eating rooms, the yard space, get it out from the interior of the site, and make it a part where the residents of the facility could interact with the neighborhood. We also gained a lot of design flexibility, although our numbers and building coverage, things like that, don't necessarily show it, but by putting the garage underground. Got all that parking out of the way so we can start articulating the building forms. Arun was very helpful in being rigorous with getting these individual elements to begin to read like houses that go around the development. We worked on articulation. Porches, balconies, decks, eaves, things like that. We talked about at the last hearing, about height, and we understood that we had a lot of these kind of large attic spaces when we were trying to make these new building elements look like other buildings in the neighborhood. And we realized that we could capture a lot of that space, particularly because it was pulled back from the surrounding neighborhood and use that for dwelling spaces. We're getting the kind of attic-style living areas that we see in the neighborhood. And that's kind of the -- the basis for the height -- the height adjustment. The height adjustment occurs right here in the middle of this roof, and right here in the middle of this roof. Generally everything else is -- is lower than what the required height is,

February 12, 2004

the way we measure it. Then we continued to look at access to daylight and air and how we were casting shadows. And our -- our approach was to maximize the setbacks as great as possible. Having nice yard space here, pulling the building back as much as we possibly could here, and bringing in the vehicular maneuvering area to the interior of the site so that services, all those things, come in off the site. We have adjustments for a loading zone, and i'm not even sure that we need them, but we've left it in the decision, because it's kind of nuances as to whether or not you're supposed to put a brick wall around your loading zone. The management plan has such few services being brought in during the week that we'd rather, again, just to have the thing be able to -- to be more flexible than having to put a wall around it. We heard the board's concerns, and the board was -- the sunnyside neighborhood association was clear in their concerns about the neighbors that still have problems with the development. And we have done analysis for the security of the building, how do you have an underground parking garage in an area like this, and still make it secure, how do you -- we have documents into the record that kind of address that. So with that, that's our general design approach. You can see the results. You can see how, you know, articulated it is, and how we have these kind of gaps like side yards and modulated bike side yards.

**Katz:** If you need more time, go ahead.

**Smith:** No. I think i'm done, phil. It's pretty clear what it looks like.

**Phil Fogg:** I'm phil fogg with marquis companies I'm the applicant. Mayor Katz, councilpersons, when you gave us this directive, I was fairly skeptical, but I need to applaud our design team, our operations team, as well as the neighborhood groups that have participated in this. It's been quite a process and I think that what we've come up with is a drastic improvement over where we started. I know it's not design issues, but there are several operational issues that get impacted when you modify the building in this manner. It's a great collective effort and we've come up with a design that enhances the appearance and livability of this neighborhood.

**Katz:** Ok. Questions? Thank you. All right. Now we're going to go back to our normal and regular running of these -- of these quasi judicial land use hearings. We had the staff report. We'll have the appellate for three minutes, supporters for three, opponents three, and then a rebuttal. How many people have signed up to testify? Ok, I may, if we keep hearing the same message over and over again, I may reduce it to two minutes as opposed to three, even though we did mail something out -- is that all right? Or are you concerned about the legal implications?

**Rees:** We'll try to stay with three.

**Katz:** She's worried about the legal implications. Ok, let's have the appellants. You have 10 minutes.

**Tim Brooks:** Madame mayor, commissioners, tim brooks with sunnyside neighborhood association, 734 southeast 34th, Portland, 9714. It's a pleasure to be back here. And thank you again. Thank you for the opportunity. We had a meeting with some of the neighbors just tuesday, and as part of that neighbor meeting I volunteered to try and keep my comments to about three minutes as it regards the board vote and direction, but I would like to preface a discussion of our resolution with a few general comments on the process. First off, I would like to echo what has been said about arun jain's participation hearing. I think that's been invaluable. Big help all around. One of the questions that came up to me anyway in the process was whether there was a way to get arun involved earlier in these matters, such as not after the second hearing on an appeal, but -- and maybe not after the first hearing, but maybe as soon as an appeal is filed, or even before that, once a contentious project is in the works. So I would recommend that some process maybe established along those lines. My perception of arun's participation is that he -- it felt a little bit like he was behind-the-scenes, and my preference would have been to have a little bit more open process so we know what involvement he actually had, what specific recommendations he had. I mean, today was

February 12, 2004

the first time I actually heard it from him. And just so we can follow it and be a part of the process. I attended one meeting with him, very helpful, but it would be useful to just have a little bit more open, so everybody knows what's going on and what the goals are and so forth. In terms of the process in general, as we all know, the rules were suspended, we're no longer in the type three quasi judicial realm here, or perhaps now we're back there, but it clearly raised of question of where we are, and leaving the last council meeting it certainly wasn't clear to me. I think what happened was there's a lot of question about, you know, what -- what the process would look like from here, where do we go. It becomes very hard to explain to your neighbors and your -- all the participants in the process. And there's a risk, I think, that you lose the confidence in the process by going this direction. There's the -- the upside is you gain a lot of flexibility. And of course we've got a much better project now. So it's hard to really call that one, but I would say we -- it would help to set out a clear process from the beginning next time you go down this path. All right. On to the -- i'm going to use 10 minutes anyway. On to the resolution. Let me read it to you. The sunnyside neighborhood association board resolves to support the proposed use and design by marquis as vintage suites at hawthorne gardens in principle. The board also recognizes that many neighbors continue to be concerned about the height and mass of the building. The board also requests that the city council address specific neighbor concerns through direct plan revisions that include, but are not limited to, shadow issues, parking control, the good neighbor agreement, and value engineering downgrades. So that motion carried by a vote of five in favor, one opposed, and three abstentions on january 21.

**Katz:** I'm sorry, what was the last one?

**Saltzman:** What's that mean?

**Brooks:** Value engineering downgrades. What that has to do with, and I think it was touched on in the marquis testimony, but what it really comes down to is once we have, you know, some nice plans that we're looking at now and so forth, but once the construction team gets involved and you get into the details of the project, things tend to change and cuts are made for budgetary or other reasons, quality of materials may be downgraded and so forth. So it's a concern around what can happen between any approval now and the actual construction. So just to comment on the resolution, it's clear that major efforts have been made to reduce what I would call the experience of bulk and mass. We've seen -- we now have underground parking. We have smaller units. We have building -- buildings that are broken up that resemble homes. If you look at elevations and so forth. We've lost some -- a fair bit of the institutional feel of the former project. The design is stairstepped back so I think that the height and mass, as perceptible at least from the street level drops away, and this is along the lines of what many neighbors supported was the approach taken in the bishop morris house case. We've got porches. We've got bigger setbacks in general. Overall a broken-up building that in the majority of the board's opinion, more successfully meets the bulk and mass issue. As the resolution states, there are also concerns, and I think one reason that this room is packed today is that you were going to hear about those concerns, and they remain focused on bulk and mass, the overall project remains big, and I think they will be best able to hit on the points where they contend it's still too large for the site and the situation. I will note that some board members raised the concern just about precedent, and, you know, where is this project in terms of, you know, its scale in an r-5 zone. Is it setting precedent? Is it -- you know, is it going to -- if you look at the broader city, this is, again, a question to the council here, but is it appropriate, and we would look to you for that guidance. Our feeling is that the project successfully addresses the concerns of bulk and mass that were originally raised. Just to conclude with the comments, the shadow and parking, those points that are raised, I think measures have been taken to work in that direction. I'm not sure that those issues are yet resolved. And certainly the board hasn't had a chance to consider them. Good neighbor agreement was sent out yesterday as kind of a broad

February 12, 2004

circulation to people. I don't believe we've had much feedback on that yet. I expect there will be some refinements to that. One question there is whether there's some way to give the good neighbor agreement some more teeth, and that's -- you know, whether by condition of the council or -- anyway, it's a question being put out there. Operational concerns here are big here, and the 50-year-plus building, marquis is not always going to be there, not always go to be the owner my guess is, for 50 years, so we want the operational aspects covered. And finally, the value engineering, avoid the cuts, and I think they've done some work in that direction by specifying details, materials, and so forth on the plans, as well as their suggestion of that condition of approval. Finally, i'd just like to thank all the neighbors that have been with this for a very long time. A lot of time and energy has gone into this. A lot of emotion. And I know not everybody's happy. In fact, perhaps most are not, but I think we've come a long way. And I want to thank the council for helping us get a much better, if not a win-win solution. Thank you.

**Katz:** Questions?

**Francesconi:** Thank you for your leadership on this, too.

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

**Katz:** Ok. Supporters?

**Katz:** I'm sorry, supporters of the appeal.

**Katz:** We have it in front of us. Right. We've got this. Why don't you turn it --

**Katz:** Somebody want to go?

**Steve Zwierzynski:** Sure. Good afternoon. Steve Zwierzynski, Portland, Oregon. I'm one of the many residents in the neighborhood that have been involved in this process over the last what's more than a year now. And i'm one of many residents that remain opposed after the long process that we've gone through regarding and dealing with the new design. It's been clear that the opposition has never been based upon the use of this property as, I believe, tim brooks explained, it's always been essentially focused on the size of the project or bulk and mass, and there are other issues that are also related to that. And the issue, we believe, before you today, is whether or not the changes that have been made have done something to the -- so that the size is no longer so objectionable. And our position is that the applicant has not done that. And in fact, the project has, in many objective measures, grown. It's gotten bigger. It has not gotten smaller. It's gone from -- this is rough numbers -- approximately 40,000 total square feet to about 52,000 total square feet if you count the covered garage. That's about 7500 square feet. It rises four stories now, and at which some points mean that the top of the building reaches up to 53 feet. And the footprint is about three times what is allowed outright under the code, or what single-family residences would be on that block. The design changes frankly do enhance the appearance. I think we all agree, as tim brooks said, that that's in fact true, but they didn't do anything to make the proposal smaller. You can take four shoeboxes and put them side by side and arrange them differently and put them one on top of the another it still takes up the same size or mass. So at some point you simply cannot design away the size or bulk and mass of the project, and that is what we have here. This is an r-5 zone. Under the zone outright you would expect about 7,000 square feet of coverage for these numerous residential lots that happen to be adjoined at the site of this project. And that's what you would expect for about seven homes that might be used to otherwise fill the block, and that's what you normally see in the neighborhood. Our city has carefully designated areas under the zoning code for several good reasons. There's a purpose to each zone category and r-5 zone is a residential zone, group living facilities are not allowed outright in an r-5 zone, but only as a conditional use. A conditional use is by definition a special circumstance. It's extra special in this particular case, because the criteria that are applied to determine whether a conditional use is appropriate are -- are more important because we're not talking about a single lot here on the proposal. It's several

**February 12, 2004**

adjoined lots. So as you look at the criteria, it's important that you see the cumulative impact from those.

**Anna Rogers Zirker:** Good afternoon. My name is Anna Rogers Zirker, southeast Yamhill Street, and I also live in the neighborhood. Two weeks ago a group of neighbors met and divided up the neighborhood into canvassing blocks. We went out after work on the weekends and asked neighbors to sign our petition against the bulk and mass of the proposed Hawthorne Gardens building as it was proposed in the notice distributed by the city. As a neighborhood we collected 185 signatures. Before you is a graphic that you have, representing our findings from our conversations with the neighbors. Yellow represents the Hawthorne garden site. Red represents the neighbors opposed to the development. Green represents the neighbors in favor of the building. And the whiter neighbors we did not have an opportunity to speak with or were apartment buildings. As you can see, the neighbors in the vicinity of the proposed Hawthorne Gardens are overwhelmingly opposed to the bulk and mass of the proposed building. Although all of the neighbors represented on this graphic were not able to make it to this meeting, we hope that you will take their opposition to the Hawthorne Gardens building into account when making your decision today. Thank you.

**Katz:** Let me ask you something, what did you show the neighbors?

**Zirker:** The notice that was mailed out by the city. It had the drawings that had been provided by the architect. That's the latest notice.

**Katz:** Ok.

**Zirker:** That's what we were showing them and they reviewed it.

**Katz:** Go ahead.

**Michael Lewallen:** Thank you for this opportunity to speak. I'd like to also state that this -- the design has improved thanks to the input by several different people, but I'd also like to note that the mass of this project is not diminished of the articulation of some of the elements in the building. It's still a very large building. As you walk as a person on the street you're not going to notice some of the articulations that we see from viewing the model. I'd also like to point out that I do believe as a trained architect that this model is inaccurate in its showing of the scale of some of the residences. I know for a fact that some of the houses are drawn not to scale. So I have a little bit of an issue with the model and the depiction of our neighborhood. With that, this building does not belong on the site. It is too big, and will forever alter the fabric for the worse. The present facility has been operating for 50-plus years and got to this size through incremental conditional use permits. Those would not be allowed today in R-5 zones. This building would not even be close to this size. It's been concluded that planned growth is smart and good business. We've implemented an urban growth boundary to protect our green spaces and farmland from unbridled roads. It's necessary for the city of Portland to change and implement new zoning regulations throughout the city to support higher levels of development, residential zoning regulations for further development to protect and ensure livability standards. For the city to work, we must protect those standards and make sure that those regulations are upheld. The site in question is an R-5 single-family residence, one per 5,000 square feet. We have almost 57 units on this building. I take this as being a group living. It's really a mixed-use development. And by that I mean we have 50,000 square feet building, four stories in many places, that's 20-plus employees, it will have deliveries throughout the day, throughout the week. It's open 24 hours. It has a business office with appropriate signage and street frontage. It has a loading zone for pickup and deliveries, a restaurant, meeting rooms, parking garage for 20 cars, a drive-thru entrance and service, that has a courtyard, a 40-foot wall. And those walls are going to reverberate sound, they're going to be noticed, and completely surrounds and overcrowds and shadows an existing residence, which windows will look upon windows. I think that's inappropriate for this neighborhood in R-5. There's 50-plus living units,

February 12, 2004

skilled nursing. This development does not step over the line of an r-5, it tramples the zone, causing extensive harm to our neighborhood, livability and our personal investments in our homes. Change is inevitable in neighborhoods, and this building has serviced for the last 50 years, and perhaps it's time for it to -- for the change of this site. Thank you.

**Katz:** Thank you.

**Leonard:** Mayor, can we -- can we resolve the issue of the scale before we go on?

**Katz:** What I want to do is wait until tim comes up on -- when he gets a chance.

**Leonard:** And I thought about that. The only reason i'm asking to do it now, is I did ask a question about that, because from what I read and seen there, I have a question. Do we have somebody from our staff that can tell us if they know if this is to scale or not.

**Katz:** Ok, hold on. Thank you. Have we analyzed whether this is to scale or not?

**\*\*\*\*\*:** May I --

**Katz:** No.

**Leonard:** I need to hear it from a neutral --

**Katz:** From our staff. Thank you.

**Leonard:** Because -- katherine, we've had it testified to that I think at some points the development is 52 feet high. Is that correct?

**Katz:** We're going to need to go through this. There was testimony that at one point it was 49. I don't know how you got to 52. Is that what you want responded to now?

**Leonard:** No. What i'm trying to get to it, is it to scale?

**Saltzman:** Including the houses adjacent.

**Leonard:** Yeah. Because if the structure is 52 feet high, those houses aren't 52 feet high surrounding it.

**Stokes:** Kathleen stokes. Commissioner leonard, I can't answer your question about whether the model is to scale, because it's only the second time i've seen it and I do not know.

**Leonard:** Ok. Let me ask you this --

**Stokes:** However, the architect who created the model is here and can tell you that, but I can answer your question about height.

**Leonard:** You can?

**Stokes:** Yes.

**Leonard:** How high?

**Stokes:** The buildings at their highest, according to the way that we measure height in the code, and I will explain that, the highest point is 35.69 feet. 35.65 feet. I'm sorry. 35.65 feet. The way that we measure height, according to the code, which gives us the rules for measuring height, is that we go from the highest finish grade, which is within five feet of the building to the midpoint of the slope of the roof for a roof of this slope, of this grade. So using that standard for measurement, the highest point is 35.65. There's a second point that the architect showed on the model, which is 33.89. Everything else is 30 feet or less, which is the code -- the limit with the code in this zone.

**Leonard:** Is it possible that on the -- standing on the sidewalk, were one to have a tape-measurer and went to the highest point of the proposed structure, that it would be somewhere in the vicinity of 50 feet?

**Stokes:** I haven't calculated that, but the drawings, elevation drawings, that council has, and which are in the record, do show the numbers from lowest points to the peak of the roof given in elevation numbers rather than in the actual height which --

**Leonard:** I do have something that shows 52 to 53 feet, and but i'm not sure what that's -- I guess what i'm trying to get to is are the houses, then, measured the same way? It's important for me to --

**Katz:** Yeah, I know that, but we're interrupting the testimony, and one of the commissioners needs to leave at 5:00. And so we'll get -- we'll have answers to these questions, I promise you, but I think

**February 12, 2004**

we need to go ahead. So for those people who can answer those questions, be prepared to answer those questions.

**Ann Dudley:** My name is anne dudley, 2806 southeast taylor street. I live in the same blocks as the proposed hawthorne gardens facility, and two of the adjustments being requested by marquis are an increase in building coverage and increase in height. The conditional use guidelines state "building coverage standards are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses." they further state "height standards promote options for privacy for neighboring properties." I feel like our home will be overwhelmed and our privacy will be compromised by this proposal. Although the new design appears from the street to be less imposing than previous designs, it actually has an increased square footage that will loom on two sides of our home. And although from the street level there is articulation and doesn't look like a massive building from our perspective, when you look at the building from the inner courtyard, it is fortress-like, three to four stories high. Our privacy will be affected by a bank of worries that corner our yard. The windows of 28 residences will look down upon us, their lights will shine upon us at night. The hum of their heaters and air-conditioners, in every window, will affect our privacy. Also i've passed out some calculations of the shadow effect. And as we understand it, the shadow calculations, in the spring and fall, the proposed building will shadow our garden, and in winter it will block sunlight to the entire ground floor of our house. It was mentioned previously that that would not be as much shadow effect as a residential dwelling, however this is not a single residential dwelling. It's 3/4 of a block. It's a massive structure with no breaks in it. So the shadow effect indeed would be greater. We bought our home six years ago. And we chose to live in an inner southeast neighborhood. We chose to send our kids to Portland public schools, to pay our taxes to the city of Portland, and also chose, because in Portland we did have the choice to buy in an urban residential neighborhood, and we chose the privacy of a backyard, a sunny garden and plenty of sunlight coming into our windows. We assumed we would get to continue to enjoy those aspects for many years to come. The r-5 zone is part of the urban growth plan for Portland that creates to a livable and urban environment. I feel it would be an unfortunate precedent for other Portland neighborhoods to ignore the zoning code guidelines in this instance. Thank you very much for considering my concerns.

**Katz:** Thank you.

**Darell Potter:** Hello. My name is darrell potter. My family and I have resided at 2813 southeast yamhill for over 15 years. We're here to talk about the issue which is and always has been bulk and mass. Marquis wants to put an 800-pound gorilla in our living room, and it doesn't matter whether it's got designer clothes or where it's sitting, it's going to overwhelm that room. And I want to mention, for us, as yourselves, this is the first chance we've had to look at this design. It turned out that we were at a meeting, and this showed up. So we really haven't had a chance to look at it too much. But one of the things I want to mention is the parking. And I want to compare this parking to a 62-resident unit assisted-living facility called macauley terrace on 31st and stark street. That facility has 53 parking spots. 25 above ground and the rest below ground. It has a separate entrance to make its deliveries of supplies that's completely away from the regular traffic. In this building, it has insufficient parking, and it doesn't have a good way of getting deliveries to and from without getting in the way of regular traffic to its location. Indeed arun has improved the design of this building, but it's still an r-1 building and needs to be in an r-1 zone. For marquis, this is one component of an overall strategy that they have to become more successful than they already are. They may lose this battle, as I hope they do, but they're winning their war. For the city council and the mayor, this issue is just another line item in your agenda, one to be resolved and then go on to the other important business of our fair city, but for the neighbors this is a life and death struggle that affects us for years to come and determines whether our efforts to rebuild the neighborhood

February 12, 2004

have been for nothing. Please consider the question on the merits of the case and deny marquis's request. Thank you.

**Julie Chapman:** I'm Julie Chapman. I also live at the structure at 2806 Southeast Taylor, which is the single-family dwelling that shares the block with Marquis. Their property. I'd like to point out some particular features of the proposed structure that would impact our family and property values. When we bought our home we were surrounded by a somewhat funky dory at that point, and what's being offered today is more on the line of an oceanliner. And unfortunately it's going to be more permanently on two sides of our house. Marty Trece actually suggested that we could look out the other windows of our house because they weren't going to be surrounded by the building. Marquis has struggled to find a modification that would make this oceanliner more palatable to the neighbors. They've taken play-doh and scrunch it up over here, and those neighbors say it's too big," and they scrunch it up over here, and these people are unhappy, and they bring it up here. What they've done is moor it right next to our house. The play-doh seems to be made with self-rising flour and getting bigger all the time. I think they're still looking for the neighbors that won't object to having this three-and four-story institution adjacent to its property. The inner courtyard area and its impact on us as a solid layer of walls without articulation and windows which will then be shined on to our yard from two directions and on to our house. The other impact that this has is that most of the business functions of this 68-person residence, plus their staff, are concentrated right next to our property. The driveway runs along our house. It is -- that will be the place where all of the commercial and delivery vehicles, the garbage and recycling trucks, the staff shift changes, the resident pickup and parking structure, vehicular traffic, will be concentrated. The exhaust management from the garage and the residents' air-conditioning and heating units will also impact the air and noise qualities of our yard. To us it looks like a bank of windows and walls, and the reason it's so formidable is that Marquis has not once addressed the central concern of the neighborhood, which is that it is too voluminous. So it doesn't matter how many meetings we go to and attend with our neighbors and discuss this issue if they don't address the central issue. We're all tired of this process. I hope you're all tired of this process. I'm concerned that city council will sympathize with the efforts of Marquis to make a structure palatable from the street views and will ignore the impacts of such a large structure as they fall on our home and on our neighborhood. With the assurances of good neighbor agreement, I don't object to the development of assisted living on our block. I object to the building as it is using -- using our yard as visual relief for their institutional function.

**Katz:** Thank you.

**Martha Peck Andrews:** I have laryngitis. I'm going to ask the clerk to read my testimony.

**Moore (reading for Andrews):** Mayor Katz and the council, despite the lengthy negotiations over the last three months this project is still not the right development for this site. The proposed project is still too big, exceeding both site coverage and building height regulations by more than trivial amounts. And if this proposal is granted, it sets a bad precedent, signaling throughout the city that new development does not have to comply with the regulations in residential-based zones. Plus sustain the appeal and deny approval for the Hawthorne Garden proposal. Martha Peck.

**Stephen McCormick:** My name is Stephen McCormick of Southeast Main Street. I think that's right there. I'm here as a conflicted resident I'd be delighted to see an appropriately-sized facility in the neighborhood. I think we do have to make an effort to accommodate senior citizens in a number of Portland neighborhoods. This proposed development is simply too large for our community. What I wanted to address was the approval criteria in your appeal notification, which says cumulative effects of adjustments result in a project still consistent with the overall purposes of the zone. The zone is an R-5 neighborhood zone. What -- and a three-story, plus various half-story buildings is simply too large to fit there. I think it's a very bad precedent, both for our neighborhood and other

**February 12, 2004**

neighborhoods, and for the whole process of finding out how to fit assisted living facilities in our neighborhoods, something to deal with over the next many years. So really what i'm requesting is that you would deny the project as presented and unfortunately send us all back to the drawing table to come up with something that in fact is appropriate both for an r-5 zone and appropriate for the kind of precedent that I think Portland's going to need.

**Will Neill:** Madame mayor and members of the council, my name is will neil. I reside at 2831 southeast taylor street, right here on the corner, the house with the tower. I'm appearing before you for the third time to strongly object to the proposed hawthorne garden development. My home is described by the county assessor as having an area of 1797 square feet. There's seven other homes of a similar size on the block. The average assessed square footage of the eight homes on the block is 1907.3 square feet. For the sake of simplicity that's call for 2,000 square feet. Each lot is a standard r-5 lot. Not huge lots or homes. Marquis wishes to build a 59-unit apartment building with nearly 45,000 square feet on 7/8 of the area of my adjacent block. This is the equivalent of building 22 2,000-square-foot homes. It would be truly imposing bulk and mass. As I left to go to work i'd look at a building of over 55 in height. When I came home on a clear, dark, evening, the reflective of the commercial lighting will obscure my favorite winter constellation. This proposed 45,000 square feet development has been redesigned three times to address mass and bulk, yet each time it grows larger. Let me ask you to imagine yourself a giant baker with a 45,000-square-foot lump of rode dough in front of you. Imagine your massive hands kneading this huge lump. Each squeeze of your giant fingers causes a lump to ooze and squirt out in different directions. Your eyes see that your lump of red dough is now hanging over the edges of your table, cupping your giant hands, you squeeze it back together, out comes your bread pan, you flop it into the pan, you try to stuff it in, you try to pound it in. It still doesn't fit. You realize that you've made a giant mistake in making way too much dough for your bread pan. I would like to point out that a use is considered conditional because it may have significant adverse effects on the character of an area. A review of a proposed conditional use is necessary due to the potential individual or cumulative impacts the use may have on the neighborhood, a conditional use is appropriate when the impacts from the use are minimal. In conclusion, I would like to request that you prevent this inappropriate and immense structure equivalent to 22 taylor street homes from being built. Thank you for your time.

**Katz:** Go ahead.

**Jon Noel:** My name is jon noel. I live on southeast salmon street. We're here today for the --

**Katz:** There's a dollar bill out of your pocket. I'm afraid you're going to lose it.

**Noel:** Thank you. I'm going to need it. We're here today for the third time. We're addressing with you the second time we were here, you asked us, and you said go back, work with the marquis, to address the mass, the bulk, and work a good neighbor agreement. At the two meetings, the first two meetings, we hammered out a working good neighbor agreement. At that meeting, though, the second meeting, we were told by the owners of the marquis, that they were not going to come down one square foot because they couldn't get a dollar more if it was smaller. We've gone to all the meetings, even though they said that, we went all to all the meetings, so we thought maybe they'd come down in size, because you asked them to come down in size. Every time we went, it was new, new, new, improved, new, super-improved, and what we've come up is a super-sized building. They said the reason why they had to make it bigger, because we asked for porches on the facility. So with the two packages behind you, we started off with a plain-looking box at the beginning, in the first session with you. The second session, still ended up with the same size box. At this session we end up with a super-size box, with wonderful wrapping, porch decks, everything like that. On the subject of the driveway, which has been brought up, i'm a truck driver, I know about driving trucks in and out, and I can tell you right now the first thing's going to happen is osha will take one look at that driveway and say to the delivery truck drivers who have to drive down that

February 12, 2004

driveway to the city -- the bus drivers will have to go on the tri-met buses to go in there to pick up people, they're not a big enough area for them to turn around in and safely back and without hitting anybody. The design of the courtyard has the entrance next to a truck loading zone. If you're backing up a truck, you have a blind spot behind you, you can't see anybody behind you. In a city catering to the elderly, that's asking for the trouble. Either the insurance company or unions are going to say no on that, and we'll have the delivery points done on the street. On the site -- the courtyard also, for the neighbors there, who are going to be living there, they'll have to have a lot of lighting there, because the elderly can't see that well. That means the courtyard is going to be well lit. The neighbors next door can cut down on electricity while reading books at night, because they can read from the light coming off that courtyard. Thank you.

**Ellen Noel:** My name is ellen noel. I also live at 2814 southeast salmon. I'd like to speak about good neighbors. Good neighbors need to be respectful of each other. Good neighbors do not play loud music in the middle of the night. Good neighbors try to keep each other -- try to help each other out when one of us can use a helping hand. Good neighbors try to give each other as much privacy as possible and do not build so high that those around them do not feel intimidated or imposed upon. To experience marquis as a neighbor means to experience different levels of relating to that neighbor. There's the relationship with the residents who are respected elders of our society. There's the relationship with the employees who work there who by virtue of spending a fair amount of time in the neighborhood become as neighbors by default. And above all, there's the relationship with the entity called marquis and with the building itself. I want to be a good neighbor, and I would like to think that my neighbors would be the same in return. I, and many of my neighbors, however, feel that the size of this proposed building will encroach upon that good neighbor feeling and negatively impact how we feel about marquis as a good neighbor, despite how pretty the package is. Thank you.

**Jennifer Richmond:** My name is jennifer richmond. I live at 2823 southeast taylor. For the third time i'm here in opposition of the massive structure proposed across the street from our home. The building, no matter how it's manipulated or decorated, is just simply too large for the site. This is not merely a statement of emotion. It's a statement supported by zoning code of Portland. At the heart of the matter is the cumulative effect of the multiple adjustments need to do enable this conditional use, which is truly a commercial enterprise to be profitable in an r-5 zone. As I understand the group living conditional use was first approved many years ago as some of the large historic homes in the area were converted internally to assist elderly or disabled. This had no visual impact to the surrounding neighbors and filled an essential need in the community. Over the years the conditional use has expanded. It is now to the point of shocking exploitation. There is a two-part explanation openly admitted by the applicant. First, if they did not already own the site they would not pursue the project, and second the funding sources, due to the census information, dictated the number of units needed to make this project feasible. The fact that marquis is a for-profit corporation cannot be lost. The proposed commercial structure is not the acceptable grove living situation approved for r-5 zones. Hawthorne gardens is a commercial operation invading the spirit and fabric of a residential neighborhood. The proposal not only flies in the face of title 33 and its definition of r-5, but is in direct opposition to the adopted sunnyside neighborhood plan. The plan clearly states that in the process of accommodating diversity, livability, the neighborhood's intrinsic character shall not be compromised, that the authenticity of both commercial and residential zones within sunnyside must be preserved. The applicant has repeatedly manipulated these issues to subvert the responsibility in satisfying their charge of reducing bulk and mass. We embrace all varieties of diversity and chose to live in sunnyside because of its openness. We implore that the council stands firm on its disapproval of the invasive character of hawthorne gardens. Your decision will set the precedence at compromising the value of residential properties

February 12, 2004

for the benefit of business in zones not intended for commercial enterprises. If approved, the consequential conditional use will some day affect the livability of all residents of Portland. Many developments are named after what they destroy. For example, a subdivision called 100 oaks probably sacrificed many large oak trees to be built. The same can be said for vintage suites at hawthorne gardens. The applicant's name for the proposed structure. This commercial development will destroy the vintage character of the surrounding homes. There are no gardens open to the public and there's certainly nothing sweet about what the applicant has proposed. Please deny approval of the current proposal in order to encourage this site and others to be developed in a healthy, beneficial manner for all Portland neighborhoods. Thank you.

**Susan Lewallen:** Susan lewellen, 2803 southeast taylor. My name is 2000 square feet. The building that sits on the lot today, already explodes the zone at 22,000 square feet. Now we have proposed a building that's going to be over 50,000 square feet. I refer to this exhibit that you have that shows clearly how massive this third redesign is actually going to appear on the lot. As we compare it only to the building that exists there right now. The size in proportion to the site is huge. And that size is a direct choice of the owner, to maximize profit. That's his choice and he's done it. Problem is, when you have something that's out of proportion to the site, in the degree that this is, every time you try to fix one problem you make five others.

**Katz:** Since we have another -- i'm going to give you another minute, but since we have another exhibit that shows size, and that's an issue, somebody needs to respond to how accurate this is as well.

**Lewallen:** This is done by an architect. I keep going?

**Katz:** Yes. I'll give you an extra minute.

**Lewallen:** Five other problems get created. We have increased setback, and that is a very excellent thing. However, in order to do that we have a tremendous problem with height at four stories. And the third design is actually going to swallow up the only remaining house on that block. We also have something else that's being exploded, and as an english teacher i'm here to say that the context of the r-5 zoning code has been manipulated. That block was always meant to have about eight lots. You measure from the highest point of your lot. They never dreamed of a single residence that would cover almost 75% of an entire block. Therefore measuring from an obscure point, they can say, hey, the highest is 35 1/2 feet, but when I stand with my two feet on the sidewalk on taylor, and I look up to the top peak of the highest element, it's 53 feet, and I got those figures from mr. Barry smith's assistant. That's the real height of this building, and it's too big. Ladies and gentlemen, height, mass, bulk, square footage, I know that doesn't mean anything because the new design is supposed to so tremendous. I started out my second pregnancy at 135 pounds, base zone weight, I gain 55, that's peanuts compared to the 150% increase of this building that already exists above the base zone. I have to tell you that when I got on tri-met buses, the drivers got pale, thinking that before the next stop, at least triplets were about to be delivered. My mother, the optimistic woman that she is, pinned something close to my neckline and said it will draw the eye upward and no one will notice that you are pregnant. Ladies and gentlemen, I have to tell you, even though the pin had gorgeous design elements, it did not disguise what soon became a nine-pound, 14-ounce baby boy, who went on to become captain of the football team at benson high school, offensive and defensive lineman. Ladies and gentlemen, this building has some pretty design points, but you know what, I looked as big as a house. This building should look as big as my house. It should fit in. I live in a 2000-square-foot home, but unwhat, it looks about as big as a mixed, multi-use building. It has 58 apartments. It has a restaurant, a laundry. It has a business office. Ladies and gentlemen, say yes to the integrity of the r-5 zone. Say no to the size of this building.

**Leonard:** I just want to ask, who drew this?

**Lewallen:** An architect.

February 12, 2004

**Leonard:** I understand, but who?

**Lewallen:** Michael llewellyn, a.i.a.

**Leonard:** Working for the company, working for the neighborhood, a neighbor --

**Lewallen:** Working on behalf of the neighbors who brought the appeal originally.

**Leonard:** He'll be here --

**Lewallen:** He's here, and he can explain if you wish.

**Leonard:** He didn't testify on this. I mean, if people are getting the point from me, i'm real cure justice about what the height really is in relationship, so it will be helpful --

**Katz:** We will explore that before I -- I know that's important. Go ahead.

**Paul Loney:** Hello. My name is paul loney, I live at 3430 southeast belmont. I'm the co-chair of the sunnyside land use committee. And i'm chair of the southeast uplift land use and transportation committee. Just want to say I worked with the marquis people for over two years in developing this. They're all great people. Some of the best people to ever come to our meetings. I'm sure they'd be great neighbors. The neighbors who live around here, they also are all great people as well the and the project looks beautiful on paper, and as a model, and it provides a needed service, as was spoken to. However, the decision shouldn't be based on neighbors, because what's happened now unwittingly you folks have pitted neighbor again neighbor, upsetting to me as somebody who's volunteered for my neighborhood association for as long as i've lived in Portland, 12 years or so. And so you've made us, the neighbor association, have to take a vote, which pitted neighbor against neighbor, and it's gotten quite ugly in the neighborhood association because of your process here. I think that you folks need to tell us, is this appropriate in an inner southeast neighborhood, because if you say yes to this, this will be replicated around Portland. If you say no, architects and developers and neighbors will understand. If you say yes, architects, developers, neighbors will know what is needed, what can be done in the city. Right now they aren't sure. I spoke with barry smith. You know, he's looking for an answer on what you folks will tell him. I'm sure a developer is as well. I think it's very important that you folks set policy. I'm sure -- I know you guys hate setting policy in a case-by-case decision, but it needs to be done. It hasn't been done yet, otherwise this wouldn't have gotten this far. So you guys really need to think about this and decide whether or not this will be allowed in this neighborhood. I mean, I think it's a good project, but I don't know whether or not you folks are thinking about what kind of precedent you'll set. So thanks. I hope you make a good decision.

**Katz:** Thank you.

**Moore:** That's all who signed up.

**Katz:** Ok. Anybody else? All right. Clients of this project. Supporters of this project. You have 15 minutes.

**Ramis:** Members of the council, tim ramis for the applicant. To begin, just a quick correction on the facts, and then we'll move to the question of the height and the model. The assertion was made that the lot coverage represented by this building is three times what would be allowed if it were single-family development. I believe you heard that testimony. Your record actually shows that if the property were used for single-family houses, subdivided for single family, the lot coverage permitted would be 14,253 feet, not the 6,000 feet that was represented to you. Actually 14,000. Over 14,000. This project has a square footage of 17,834. So it's correct to say that the project proposed is 3,000 feet more of lot coverage. It's incorrect to say that it represents three times the allowable lot coverage for single-family homes. I wanted to make sure that those facts were clear.

**Katz:** Let me just interrupt.

**Ramis:** Yes.

**Katz:** We need to take a look at this document, because this document does say 6,000. You'll come back later on. Just want to flag that. Go ahead.

February 12, 2004

**Ramis:** Right. 6,000 would be the number if you never subdivided the property and built one house on it. That explains the discrepancy.

**Katz:** Thank you.

**Ramis:** Second, with respect to the model, when I saw it, I asked the same question, commissioner, that you're asking, is this accurate. I asked barry's office to review this again. They produced -- they did that. They produced a letter, which has been provided to your staff and which is in the record, which is stamped an architect state of Oregon stamp/seal, indicating it is built to scale, it's one inch equals 20 feet. The elevations here are based on city of Portland topographic data. That's what's been incorporated into the plan. I went out and looked at the site. And as a -- to the untrained eye what appears to me going on is many of the older residences in the area were built at a time when developers built the level of those lots up higher than street level in order to provide privacy. So many of those structures are built at a level -- they're ground floor level is much higher than the street. I think that's part of the explanation for what's going on in the model. I'll let barry explain it in more detail.

**Barry Smith:** Ok. I'll go after the height one, because the height is -- it's confusing, because what's the actual height of the site -- of the building. The number -- the 53 feet number, 52 and change, is from the highest point, right here, of this roof, to the lowest corner of that site. So height is kind of relative to where you stand in the site. One of our ideas is, is that from that lower corner you're really not seeing this, and the neighbors who live along this taylor street say, well, we look down this driveway, and we can see this tall building. And that's true. We hope to be able to develop landscaping to screen that as much as possible. But in terms of the way the code defines height, you see the adjustment criteria in front of you and it's measured five feet from the face of the building, and you measure up. If these two elements that were over the height requirement were built as flat-roofed areas, meet the height requirement, but they thought the pitched roofs were more in character with the street. There's an exhibit in a february 9 letter that I sent to kathleen that addressed the issues brought up at the sunnyside neighborhood board, and it talked about shadows on this property. In the photographs that are taken of the model, they were taken out of doors about a week ago. And you can begin to see, if you look closely, the shadows that are cast. What we're finding is that on -- there's -- in this document, current design shadows, we have projected the shadows as they occur about a week before and a week after december 21, and they come up on the neighbor's house. We also drew a picture of what would happen if we developed single-family houses here and we showed a projection up the neighbor's house. Essentially this building is the size that a single-family house could be, but we're set back 15 feet from the property line. A single-family house could be five feet from the property line. The point is, is that the houses cast shadows on one another. We tried to minimize it to the best of our ability. There was a question about truck maneuvering. We've gotten the vendors to give us their truck requirements. And their truck requirements work in the maneuverability of the area for the loading zone. Building coverage is really kind of another one of the strange issue. Title 33 adopted the old title 34 and had different ways to calculate building area. And it had to do with the size of the lot. Should this be a single-family development, I went through those calculations, and that's how I came up with approximately 14,000 square feet. We also include, because of the time that we submitted this application, the area under the eaves, which is about, you know, 3% or 4% increase, and we include the area that's in the parking lot, which is bermed up and landscaped over, but still counts as building area. If we start looking at building area as opposed to building square footage we're thinking it's kind of in keeping with the character of the neighborhood. We went to the historical society looking at what occurred on this site. There were never single-family houses torn down to building these facilities. There were two houses on 28th, but this has always been one large parcel and had a building here that turned up around the turn of the century, and it's always been labeled in

February 12, 2004

the maps that we see either as a dwelling, but in later years it was shown as a sanitarium. There's a lot of history in the sunnyside neighborhood and the hawthorne district for group living facilities. This facility kind of grew up as generations changed the way they housed people who needed special assistance. In the 1950's, we find buildings built out here, the core of the buildings there now. This is another generation of our inner city neighborhood, inner southeast Portland. This will be the pattern that you'll see. I mean, paul loney was correct. This site is particularly nuanced in its ability to have the number of residents it's had because it's always had them, and that's part of the reason why the density is what it is, but you will begin to see more and more in r-5 zones, for conditional uses, buildings of this size and character, because that's what, you know, the -- you know, the zoning code is setting forward to allow inner city neighborhoods to support the populations that want to live in downtown Portland. We're 28 blocks from downtown and that's where it is. The model is correct to scale. If anything, we've underestimated the size of houses. The reason why they look taller in many instances, even though the house is smaller, is because they are bermed up and the slope does slope -- the site slopes significantly.

**Smith:** The site slopes. There's nine feet of difference between this corner and this corner. That's a pretty big difference. A two-story house that sits on a four-foot berm on salmon street is a lot higher than a two-story house that doesn't sit on a berm on taylor street, but the model is to scale. You can see the actual relationships of the new design to the existing houses.

\*\*\*\*\*: The height adjustment drives one single feature of the design, and that is whether the roof in this higher portions will be pitched or flat. This project could be built essentially with this design, but without the height adjustment by changing those to flat roofs. Our feeling was, and I think many in the community felt that a flat roof was inappropriate given the pitch of the roofs on the adjoining structures.

**Katz:** You've got about seven minutes more.

**Phil Fogg:** Phil fogg. I'm with marquis. We have never been anything but forthright in the requirement that we need 60 or more units to make this economically feasible. I think you were clear with that when you gave us the directive last time to leave, that that was not one of our requirements to reduce the amount of units. I would want to make it clear based on some of the comments, whether this was a for-profit project or not-for-profit project, it was going to need 60 units to be economically feasible. Whether it was operated as a for-profit or not-for-profit is really not relevant.

**Smith:** I don't think I have anything else, unless you have questions.

**Katz:** Ok.

**Leonard:** Yeah. I'm sorry to keep hammering this, but it just -- it doesn't strike me as intuitive that you have at some point places a four-story structure, notwithstanding the elevation differences that would be smaller than two-story houses, notwithstanding that they might be on a four-foot berm. I want to make sure i'm asking the right questions so you give me the right answer. If we had -- if we approved the project and it was built, and I were to go out and take a picture of that project built, are you testifying that the structure, as I see it there, would be at the same position relative to the surrounding structures, that what would appear to be smaller than the surrounding structures, notwithstanding your constructing in some areas a four-story building and these are two-story houses.

**Smith:** Right. And the answer is yes. The issue about height and bulk, and everything else like that, that we kind of left the council last time with, was can we design around some of the kind of conditions that make the building seem so big and make it not look so big. That's what we've done. It doesn't look like a four-story building, because wherever it interacts with other people, even the neighbor on the same site, it's not a four-story building. It's a four-story building where we have an underground garage, so it becomes a three-story building. It's a two-story building where we build

**February 12, 2004**

out in the attics, which is very typical of the houses in the neighborhood. So we used devices to get that extra area and tuck it up into these attic areas, like common pattern throughout the neighborhood, so it doesn't appear as a four-story building. So we're square with the numbers. We're giving you the most accurate numbers that are available. As a part of this land use decision, the criteria going forward is you can't go out and change this. You can't all of a sudden start making this look bigger. So this is to scale. And in the pictures we took, you know, are from those street views, and you can really begin to get a sense of what the development has character for in relationship to the other buildings. That's what we were charged with. And that's the kind of advice that we got from arun. They're very effective design measures.

**Saltzman:** Explain us to the exterior lighting and noise impacts of heating and air-conditioning units.

**Smith:** Right. What we're doing for lighting is, there will be lighting in the interior courtyard that helps for the service area. And the garage. And we're developing the lighting levels so that they don't cast into the adjoining property. What we've done is there's -- we've shown the foot-candles on adjoining properties. The rest of it along the street edges, is similar to what you would see in a single-house development. We're not lighting up the streets or yards, but people will have their lights on in their rooms. The air-conditioning units are through-wall units that by their nature have been attacked over the years and by design now are very, very quiet. What we asked was, we had our acoustical engineer do an analysis as if every single one were on at once, and what would the noise impact be, and at the crossing property lines none of them received the title requirement a nuisance. But they hum at very low levels.

**Saltzman:** So when we talk about the applicant's commitment to a specific design, does it refer to actually using these brand of heating/cooling units?

**Smith:** Yes. And if they chose another type of unit, I think it's a condition of the hearings officer's report that we have to submit the acoustical information on, so we would have to choose another brand that would wouldn't have higher sound levels.

**Saltzman:** The shadow impacts on the house are greatest at the winter solstice?

**Smith:** Yes. That's what's in these diagrams.

**Katz:** Further questions? So we can wait --

**Leonard:** Well, I mean --

**Katz:** Go ahead.

**Leonard:** The basic issue, then, is that -- I mean, you were at the last hearing we had asked to go back and see what you could do to make the design compatible with the concerns raised here, but you haven't been able to reduce the square feet, the overall bulk of the building in consideration of what you've said, which is this has to be something that makes sense financially for marquis. And have I grasped --

**Smith:** I can help with the square footage. The square footage actually grew. One of the reasons why it grew is that we had surface parking in the last scheme.

**Leonard:** Right.

**Smith:** Now it's under the building. The second thing is, is that part of the economic constraints that we had in the earlier designs was to keep the building not having a lot of changes, in the in and outs, and these create inefficiencies in your floor area. So if I crash these buildings together, there's eight feet times the length of the building that wouldn't be additional building area. The building as we expand it and push it and pull it, becomes less efficient, and so the building square footage actually increases. You can't use that as a measuring stick. What is the floor area, and is more floor area necessarily bad? In order to accomplish some of the design goals that we heard were important from folks, the building actually increases. It's not like we're trying to increase the size of the building and pull one over on you. It's a result of our --

**February 12, 2004**

**Leonard:** I guess what i'm getting at. I understood the dilemma you guys were in at the last hearing. In fact, I think you just about had given up and said we just can't do this smaller. So isn't it accurate that you heard what the neighbors said, you heard what we said, but still you're limited by the economics of the project, and you couldn't quite get to the place that we were telling you you needed to be at. Am I getting that?

**Ramis:** You'll have to judge whether -- make that judgment.

**Leonard:** Am I characterizing the issue correctly, that you had some parameters in trying to get to where we needed to get at, and that is economics --

**Ramis:** We have an economic reality we have to address. We took the cue from the neighborhood leadership, as well as your suggestion, to try to get there by choosing some of the design techniques that worked elsewhere, such as in northwest Portland. The key one was to step the project back from the street so that from the street itself it reads more consistently with the surrounding buildings.

**Leonard:** But I guess i'm getting at, tim, is it unfair to say that you were unable to get to the place where we thought you ought to get to?

**Ramis:** Only you can answer that. We understood you to say that we should try through design techniques to make this building more compatible, to make it work better in terms of its mass and bulk appearance, to maintain our program, but to address the design characteristics. We didn't understand you to be saying, reduce the size of the project to something uneconomic.

**Leonard:** Ok.

**Smith:** And we've made interior changes to the program, too. We've introduced some housing components that will generate more revenue by providing greater levels of care. So that we can afford to amortize the additional costs. Where we were last time, I couldn't push and pull the program that we had anymore without taking radical steps. I think I said that. Marquis took those radical steps and said, all right, what do we need to make these things work? So we added those program elements by additional levels of care and things like that.

**Katz:** Ok. Let's move on. Are there further questions, we'll have the council wait until the testimony is over.

**Katz:** Let me remind you that the issue here is design.

**Sue Matranga-Watson:** My name is sue watson, and I live at 2822 southeast salmon, and I live directly across the street from the proposed marquis building. I've lived there for 15 years. I live in I four-story house, a basement, a main floor --

**Katz:** Could you point to it?

**Watson:** Yes. Where's salmon on this?

**Saltzman:** Right toward you.

**\*\*\*\*\*:** There's salmon right there.

**Katz:** Ok.

**Watson:** I have a four-story house that includes a basement, a main floor, a second floor, and an attic. All are used, in full. I also want to say that i'm one of the neighbors that was not asked on the opinion poll that was around the neighborhood, so I guess they assumed that I was for the marquis building. I want to say that I feel that I have been also in front of the council and have gone to numerous meetings over the last several years. I was for the original structure, and I am really, really pleased on the design that the city council has really put forth and put the effort for marquis and the neighbors to work on. I think that the structure itself will be a positive influence in our neighborhood. I think that looking at in front of -- at my house, looking out on the building that exists now, and the possibility of the building that will be there will only increase the value of our neighborhood. I don't think that -- yes, it is going to be big, but I look at the building that is there, the trees that are there, and I realize that we're not going to be much taller than the trees that already

February 12, 2004

exist. I also realize that with a new structure coming in, it will increase, as far as i'm concerned, the neighborhood and the quality. Marquis will keep up the building. The landscaping will be kept up. We won't have the drug and alcohol problems from the people that sit out and drink in front of the house, the homeless people. So I think that overall the whole quality of a better building, a better place for seniors to live, and especially people with alzheimer's. I really appreciate that addition, since I work with alzheimer's patients.

**Katz:** Thank you.

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

**Katz:** Grab the mic.

**Jude Watson:** My name is jude watson and I also live at 2822 southeast salmon. And I wanted to thank the city council and the mayor for their patience with our process, for the wisdom to include a room in the design development. I think that was paramount in getting a significantly better project on site. His fresh insights and marquis's willingness to be open and innovative in their redesign efforts has created a far superior project. I applaud marquis's fore toot. I'm encouraged that their willing to spend the amount of money that it will require to building this project. Over the first one. I think we're looking at hundreds and hundreds of thousands of dollars difference in quality of material and projection of what this project will be in its end. I believe the completion of this project will not only enhance our neighborhood's inclusive livability vision, but also increase property values. We live in an urban setting. The world's population is increasing as well as aging. The urban growth boundary precludes us from going out. We must go up. We must -- vintage suites at hawthorne gardens is an innovative, forward-looking project, bringing our senior population right into the heart of our neighborhood. I believe that this design will be a model for the city, the state, and frankly the entire nation. Let's not relegate our elders to the outskirts. Let's embrace these neighbors in a high-quality, centrally located facility. We will all benefit. Thank you for your time and consideration.

**John Barker:** My name is john barker. I need to learn to write more clearly. I live at 3124 southeast taylor street. I also work there. I'm an architect, work out of my house, in the eighth year of my contract with the city doing storefront improvement projects. Have renovated a number of plexes in the neighborhood. And I used to be president of the neighborhood association when we did the belmont dairy and the belmont livability and zoning studies, which I think have -- are a positive precedent and an example that to me that seems like deja vu all over again, going through both those scenarios, but throughout all this stuff, my livelihood and my volunteer work, I think the overriding theme has been to do what's realistic, pragmatic and achievable, what's the best you can do given the existing circumstances. And that's why i'm pleased at this point to support this project strongly. I wouldn't have done that at the beginning, but I do now because I feel the -- thanks to the strong input of the neighbors, the neighborhood association, and the very creative and progressive developer that we have in marquis, that we've really come a long ways in -- as is typical for Portland, to set a good model on how to bring diverging interests together. Everyone may not be happy with it, but I think it speaks well for everybody in the neighborhood and the city. I think, getting back to being pragmatic, on paper we have r-5. Wonderful. If this is fresh, new earth, you could maybe do that. Having said that, though, i'm not sure I personally, as an architect, would want single-family houses there, in the sense if it was torn down, this rather ugly building, you could put in any kind of house you wanted there, and although some may disagree on the merits of this design, I would guess that we could all enthusiastically might oppose that might built there, a mcmanion. I would much rather support something that's had a lot of thought, very progressive socially, as opposed to something that theoretically that could be built there which I personally would think would be awful. There could be a single-family home that could meet the code, but ugly and detrimental to the neighborhood. Just a sidetrack here, the belmont dairy was similar.

February 12, 2004

They did not have the zoning issues. They had height issue problems. They met with the neighborhoods. There the issue was similar, though. To do a better project, they wanted to do nine-foot ceilings and that required having a higher project. So similar to here, they've improved the project, increased the size of it, but I think it's to the better of the neighborhood and the project. So the dairy also met many times with the neighborhood association as these have, both during -- before, during and after construction. So I think marquis is a good neighbor and will continue to be. Belmont livability and zoning study was a similar thing. We went through and rezoned --

**Katz:** Thank you.

**Darci Rudzinski:** I reside on southeast madison. I'm a current sunnyside board member. Just speaking on -- as a board member, I think that as tim read the resolution, it really illustrates the conflicted nature of a board member. We're planning for the whole neighborhood, while at the same time trying to faithfully represent the few. As an individual board member, reviewing the various designs that have come forward, I feel the applicant has adequately met the mass and bulk issues through design. Speaking strictly as a resident, while I currently live at 39th and hawthorne, or very close to 39th and hawthorne, I used to live on the corner of 28th and yamhill, very close to this proposed project, and there are a few things that are clear to me. This particular development is not going to satisfy the immediate neighbors. It's also clear, at least since I live near that block in the early 1990's, the property owner hasn't made any significant improvements to the building or the site, at least that are evident to me. The age of the building and the fact that it's been vacant for so long further indicates to me that its useful life is near its end. To my mind redevelopment is preferable to having an abandoned building on this site. This is a tricky site to develop for various reasons that i'm sure you've heard extensively about. If it's even financially possible to build something that's being proposed on this site, I think it has the potential to be another signature project for this neighborhood. While at the same time providing housing for a vulnerable demographic, similar to other signature projects, as john barker suggests, not all sunnyside residents are going to be happy with it. In closing, I want to agree with also something that tim said, that this project could set a precedence, but not because of its size. There simply isn't that much land available in any appreciable configuration left to develop in sunnyside. We will see some of these infill projects and redevelopment projects that are going to be very heartfelty opposed and supported. It could, however, set a standard for what sunnyside expects by way of design and infill projects. For that i'm very grateful for the process. I want to thank you for allowing us to go through it. It's been arduous and tough on everyone. People spent a huge amount of time coming from every direction on this. I realize we've -- the city has deviated somewhat from the normal process. For that i'm very grateful, because i'm pleasantly surprised with the result.

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

**Linda Jones:** I'm linda jones, live at 2936 southeast taylor. We're four doors down from the proposed facility. I want to compliment everybody for their hard work on, this especially marquis, because they've gone in and totally turned everything upside down, totally redone it. They've broken up the buildings, so it's not one basic solid building. They've rerouted the sidewalk into the main entrance, so it's no longer on taylor, yet the sidewalk leads from 29th to the front door, which cuts down on some of the traffic and parking on taylor that people were concerned about. They've totally buried the garage, which everybody's talked about, which has increased the number of square footage, but that's eliminated a lot of the parking situation. They've redone the landscaping so that on taylor, from what i've seen on the display, it's kind of going to be like a park-like setting on taylor, which will encourage the new residents there to come out and actually meet with the neighbors and say hi. That's basically what a neighborhood's about. And we've got several people object to having this facility here. They think it needs to be on a busier street. Why do senior residents need and have to live in an industrial area and on a major street? Why can't they live in a

February 12, 2004

neighborhood with the rest of us along with the kids and the people walking down a street? And why can't they just be there and be our neighbors? A lot of the senior citizens that will probably be moving in here do not get a lot of visitors. Their family usually is the people -- are the people that live there in the facilities. I feel it's about time we allow this facility to be built. I liked the first one, but this one's a lot better. It's time for the neighborhood to get together and welcome seniors into our neighborhood and our family and to allow this facility to be put in. Thank you.

**Katz:** Thank you.

**Roger Jones:** I'm Roger Jones. And just for reference, I guess we're kind of like right over here, so we're not really visually seeing the front of it, but we welcome back up and down and through the whole neighborhood. Also at this location, if we could see our house, it would be one of those ocean liners, rather than the dories that we've had described, because our house is about 4,000 square feet or more. It's also like Sue's. It has a full basement, one story, two story, and then a full attic that are occupied. Very, very similar to the tallest building right here. This is a common nature, that are homes in the neighborhood similar to ours. We're not the only one like that. There are also small homes in our neighborhood, and that's why 18 years ago I made a decision to move into this neighborhood because of the diversity, because of the different kind of living arrangements, because of the seniors and kids, and over 20 years, having worked with -- so that's just an introduction. But there's a really key point, and that is what the Sunnyside Neighborhood Association has been able to do to come to you with a thoughtful presentation today, which is obviously conflicted by some of our neighbors who are in opposition to this. Over the last 20 years, having been on the board of the neighborhood coalition in that area, and having spent a lot of time with Sunnyside, I really believe that they've gone through a process that is phenomenal and should be remodeled and replicated so that they can bring you a good, thoughtful decision, and then hopefully they would be able to take that argument out. I'm very sensitive to Tim and Paul's concerns about not having enough guidance to get through and pitting neighbor to neighbor. It is totally unfair. I've witnessed things I never thought I'd see between neighbors in my area. When the petition went to people, I can tell you for a fact, that the one with greens, have never seen that petition. My wife's never seen it. I've never seen that petition. Other people that were supposedly referenced in the document by that petition, we don't know what was handed to people. I have no idea. I'm not conflicted by the sadness that I have, that it appears there's been compromise in working towards a solution for this today. Clearly I'm outnumbered as a person here in opposition, but I know that there are many more people that will love this when it's built.

**Ruth Parvin:** I'm Ruth Parvin. I'm 55 years old. Yesterday I lost two heads of romaine lettuce that I haven't found. I've got creek knees. And I've got an ankle that predicts the weather. I have two family members that are younger than me. When I get to the point I need a place to live, I'm going to have to take care of myself for finding that. So I'm really interested in this design. When I'm looking, I want to have a building with a lot of windows. This has a lot of windows. I want to look out on to a neighbor where I see people mowing their lawns, picking up their trash. I'd like it to be someplace where I can cross the street with some kind of safety. Maybe be out and not worry about my safety. I'd like it not to be on a major highway. I'd like it not in an industrial area, or in this place where nobody cares about the neighborhood. I'd like to be close enough where I'm ambulatory I could have some zinfandel or pad thai. As time goes by I get more and more confused about what the answer is here. I don't think this is a life or death situation like somebody earlier this afternoon said, but I think it challenges our values and we have to examine them. I find that I personally am caught between self-interest, selfishness about property values and things like that, versus what is good for our community as a whole. And I really do see these two things as being opposed here. Do we want a community that integrates its older citizens or do we want to relegate some of our most vulnerable people to the hoods where no one cares about the building, to the

February 12, 2004

unappealing places, the vistas that no one wants to live in, to the places that there's really busy streets. I live -- I live by the oceanliner that just sat here before talking to you. Their houses tower over where my house is. I'm lower on the street than theirs is. Doesn't bother me. I live in between two apartment buildings. There are over 20 apartments looking down into my yard and into my house. The lighting is not particularly a problem. I wish I had more sunshine for my gardening. I moved there, knowing who my neighbors were. I got lower property costs because of that. I knew that the nursing home was there. It wasn't something that I was excited about. It's been mucher since marquis bought into it, but I knew it was there. They own that property. They have property rights. So I get confused about, do we have a right to say they can't do this building that they want to do? And again, I don't know. I look at this, and I think, this doesn't seem to represent things quite right, because it says that it doesn't include apartment buildings. But my apartment buildings are all registered as people who are opposed. Lots of rental properties are.

**Katz:** Thank you.

**Parvin:** Maybe you be as wise as solomon.

**Katz:** Rebuttal?

**\*\*\*\*\*:** Do we need to sign up for that or --

**Katz:** No.

**\*\*\*\*\*:** I don't know if the height issues have been addressed --

**Katz:** One second. Who's the --

**Rees:** The challenger is, the appellant is the neighborhood association. I was just having a quick conversation with mr. Brooks on whether they wanted to designate somebody to make their rebuttal.

**Katz:** Mr. Brooks, it's a hard issue to deal with, a neighborhood divided.

**Smith:** I'm barry smith. The project is higher in some spots and lower in some spots than what was previously approved by the hearings officer.

**Michael Lewellan:** I'm michael lewellan, 2803 southeast taylor.

**Leonard:** Do you agree that this is to scale and elevation?

**Michael Lewellan:** The proposed buildings themselves may be to scale. What I challenge are the houses and where they got the scale and size of the residences. Being there, I feel that it is not -- it is not correct. The houses seem to be too large. That was my earlier statement.

**Francesconi:** Sir, I have to cut in here, because you're just basing that on a feeling. You haven't done analysis, right? Is that correct?

**Michael Lewellan:** Right, that's correct.

**Katz:** Wait a minute. Commissioner leonard is asking --

**Leonard:** Go ahead.

**Saltzman:** You're a professional architect, and you've seen the letter from barry stamped, testifying as to the scale?

**Michael Lewellan:** New york city I haven't.

**Saltzman:** Well, as a professional, would you believe if you put your stamp on something, testifying to scale, that it's probably correct?

**Michael Lewellan:** Again, I would believe that on the buildings. It's the residences and how they achieved the dimensions of the houses. I don't have any objection to what he may have scaled on his own design.

**Katz:** All right, thank you. I need a -- a lot of testimony on the r-5-setting precedent. Do you want to comment on that? Yeah? Come on up. I think we discussed that last time a little bit, and I think you did comment on it.

February 12, 2004

**Stokes:** If I understand -- kathleen stokes, bureau of development services. Mayor, if I understand your question, you want to know whether an approval of this project would set a precedent for future development.

**Katz:** Right.

**Stokes:** In r-5 zones.

**Katz:** With a conditional use.

**Stokes:** The answer is I believe both yes and no. And I will explain that.

**Katz:** I would have expected that from linly.

**Stokes:** I've been talking to linly a lot.

**Katz:** All right, go ahead.

**Stokes:** Let me answer the no part first. Or explain the no part first. We do look at every proposal as an individual proposal and look at its characteristics in regard to the individual site and the individual location within a neighborhood. That's what a conditional use is all about. It's a use that we recognize that certain uses need to be located in residential areas, we have churches, we have schools, we have group living uses, as some of those most common ones, and we look at it in each case individually, and if it is allowed it's allowed conditionally, which means that within certain parameters it is allowed and it's allowed with conditions placed on it perhaps that ensure that those parameters are met or that control or limit the use or the development in some way. When I said, yes, that it could be precedent-setting, I think that what tim brooks and paul loney alluded to was that this could be precedent-setting in that going through a more rigorous design process to assure that a proposal -- or proposed development met -- fit into a neighborhood and could be allowed conditionally, that idea certainly would be referred to in relation to this building and hopefully could happen -- hopefully with somewhat less emotion and a slightly shorter process, but that that type of taking a more in-depth look, trying to design specifically for the site, that in that way it could be a precedent.

**Katz:** Thank you. Further questions by the council?

**Saltzman:** I guess I should ask mr. Smith to come up here because I may have misread the stamp letter, and I want to apology to mr. Llewellyn if I did, but your stamping is testifying to the scale of the project, but not to the surrounding houses. Is that correct?

**Smith:** Right.

**Saltzman:** They were not surveyed?

**Leah Towne:** This is leah towne. I live on north wall avenue. I built this model. I worked on the design of the building. The model itself is built to scale. It's 1/20.

**Saltzman:** The model of the --

**Towne:** Of the building itself. And in building the surrounding houses, the approach I used was an aerial photograph and individual pictures that we'd taken of each house, so it was done on my estimation of how I figured the buildings, how tall they were. So that's how it was done. The tolerance in this --

**Francesconi:** I need to apologize, too.

**Towne:** The tolerance being built at 1/20 is probably plus or minus a foot in itself because it's so small, because a 20th -- or a foot being a 20th scale is really tiny, so it's initially probably going to be plus or minus a foot. And then based on the approach that I took, which is not exact, I didn't have exact dimensions of every single building that was on the site, and it may be plus or minus three or four feet. So that's the dimensions.

**Saltzman:** The adjacent buildings?

**Towne:** Yeah, of all the other ones. This one I had the dimensions of because I designed it, so it was built to scale, and the rest were built off photographs.

**Smith:** 3/20 of an inch?

**February 12, 2004**

**Leonard:** My training was always that one story was 12 feet. Is that approximately correct in your opinion?

**Towne:** That a story is 12 feet?

**Leonard:** Equals 12 feet.

**Towne:** It totally depends on the plate height of each building.

**Leonard:** On the structures around there, generally if, look at a two-story house, it's 24 feet high?

**Towne:** That's probably correct.

**Leonard:** I guess that being in my head, looking at the surrounding structures, i'm not talking about the building that you have to scale, but the surrounding structures, i'm looking at what would appear to be 25-foot houses sitting taller, notwithstanding the fact they may be on a four-foot berm than what at some points, would appear, at least on the salmon street elevation as being a 44-foot height.

That's why i'm saying intuitively it doesn't hit me right. I mean when I saw the model initially it didn't hit me right, that it just didn't seem -- I agree, that what you've constructed for the project is probably to scale, but the surrounding structures intuitively hit me as not being to scale.

**Towne:** Well, I think some of the difference comes in the fact that the building itself is not built with a basement, usually three or four feet. When you go up to most of these houses you're going to walk upstairs. Regardless of the berm you've already gone up, you're going to go up stairs. And their floor to floor heights are probably larger than the floor to floor height in this building which is eight and nine feet. Most of the older houses have nine, sometimes 10 more -- if their first floor heights.

**Leonard:** You're certifying that the structure you designed is to scale, but you're not certifying that the surrounding structures are?

**Smith:** I actually --

**Leonard:** I'm asking her that.

**Smith:** Well, it's my stamp. And my stamp says that they're accurate to within the tolerances of a 1/20 model. What we used were walking tours of the street with photographs. We used the city topographic maps, which in some cases does have elevations to the top of buildings. And we did some interviewing of neighbors. I asked them what their ceiling heights and things like that were. So within the tolerances of 1/20 scale model, which she says three feet, 3/20 of an inch, those stand the dimensions of anyone's in this room.

**Katz:** Ok, thank you. All right, council. First decision we need to make is whether we approve of this design -- let's talk a little bit about that, and then if the answer is yes, we need to go through all of the conditional use adjustments. We don't need to talk about it. You can make a motion.

**Leonard:** Well, I guess, just thinking out loud, I would say that the scale, notwithstanding -- I mean, that the first hearing had -- I at the first hearing had concerns that it was too large of a structure, and I think I said then, and i'll repeat now, that I don't think anybody's -- anybody believes more in the higher density than I do for the reason we heard. I'm a strong defender of the urban growth boundary, and have been for years, and as a result we have to accept increased density, so there are some neighborhoods that should be done in Portland. My position on that isn't very popular. I understand that. I accept that. If you're promoting infill housing or skinny lots, that means that there are no end to the amount of density that a neighborhood should accept. It's an imbalance in the amount of density in the neighborhood. I appreciate the effort that the project managers put in to try to rectify it, but, you know, I think they've acknowledged that -- that they have to have a project of a certain size to make sense, and I understand that, and there's two forces, there's that which I respect, but then there's in other, I think, issue that we have to balance of livability. As I said in some neighborhoods, that's going to mean us making decisions that aren't popular, in this case for me I don't think that I can get myself to a place to support this project.

**Katz:** Do you want to make a motion?

February 12, 2004

**Leonard:** I'd move to deny the --

**Katz:** Approve the appeal, overturn the hearings officer.

**Rees:** Just one note, if what you're doing is either to deny or to modify the hearing officer's decision it will be a tentative decision today, because we need to come back with findings.

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

**Katz:** Do I hear a second?

**Katz:** Motion fails. Do I have another motion?

**Saltzman:** Well, I'll move to uphold the hearings officer's decision.

**Katz:** Do I hear a second?

**Francesconi:** I'll second it.

**Katz:** All right. Roll call.

**Sten:** Can I make a point?

**Katz:** Sure. Go ahead. After today's hearing, I'm interested in approving it, but I'm interested in approving the new design, not what the hearing officer -- do you actually take a vote on upholding the hearing officer? I'm not interested in --

**Katz:** No. It is the -- it is the new design.

**Sten:** That wasn't the motion.

**Katz:** Do we need to clarify the motion that, it reflects the new design?

**Rees:** Correct. If you uphold the hearing officer's design you're approving the old design.

**Francesconi:** I withdraw my second. [laughter]

**Katz:** Go ahead.

**Saltzman:** I would move to uphold the hearing officer's decision with the new design.

\*\*\*\*\*: With modifications.

**Katz:** With modifications. And those -- before I get your second, and those -- and those modifications would be those adjustments that we have in front of us.

**Rees:** I think it would be appropriate to do -- to go through those so we're clear when the findings and decision are drafted --

**Katz:** All right. You want to go through those?

**Saltzman:** So it would include the increased building coverage, amended loading space screening requirements, and increased height.

**Katz:** Those are the --

**Saltzman:** And also the condition previously, I guess, which -- about the building must be built to the new design.

**Rees:** Correct. I heard a couple of possibilities for conditions. One was concern about types of materials. Good neighbor agreement. And then you have the additional conditions that were already in there, and those would be -- if there were any other conditions that you wanted to discuss.

**Saltzman:** I recall the discussion about types of materials from last time, but -- I think we want to carry that forward. Do we want to carry forward the good neighbor agreement? And what was the third one you just mentioned?

**Rees:** The prior conditions, but you -- that's contained in your motion to uphold with modifications.

**Katz:** Ok. So we're including the prior -- the prior conditions in addition to these, in addition to the ones that we had with regards to the good neighbor agreement.

**Rees:** For example, the old conditions included the air-conditioning, which was one you were interested in doing. I didn't hear -- on the good neighbor agreement, there are conditions in the old one. I wasn't sure if you wanted to -- if there was a desire add -- I'd let Tim probably address how

**February 12, 2004**

the good neighbor agreement has proceeded and what condition needed to be in there to address that. I don't know.

**Saltzman:** Kathleen, you look like you want to come up here, help us through this motion.

**Stokes:** I thought you'd never ask. Kathleen Stokes, Bureau of Development Services. I believe that what you would like to do is to have a motion that says that you deny the appeal and approve the modified proposal, which includes new design and incorporates conditions that were required by the hearings officer, as well as any modifications that have occurred, such as there are modifications to the good neighbor agreement that includes more things now, and to approve specific proposed materials with the design.

**Katz:** Did you include these new adjustments in --

**Stokes:** And the adjustments will be incorporated into the modified design, so you would be also approving those adjustments.

**Katz:** As well. Ok.

**Saltzman:** I'll make a motion.

**Katz:** I think that's accurate --

**Sten:** I'll second.

**Katz:** Ok --

**Sten:** One more question, Mayor. The neighborhood association, in their letter of support, addressed three issues they wanted, which was shadow issues, parking control -- well, four -- the good neighbor agreement, and value engineering. Can you refresh my memory what the two sides said about the shadow issue and the parking control?

**Stokes:** were cast and how they were measured and whether the proposed development would cast any more of a shadow on the neighboring property than single dwelling home that could be built if the property were subdivided. And so that's part of your decision as to whether you think --

**Katz:** There was no --

**Stokes:** The shadow that would be cast by this building or something that would deny it. The parking control actually was, as I -- I had called the neighborhood chair, because I was confused by these terms as well. That did refer to the layout of the parking area. The -- there is one space in the 21 spaces that are proposed where there's not adequate backup area currently. There's a representative here from transportation who is prepared to talk about that. If you needed to confer with him. He was saying that if one space were deleted there would be adequate backup space. They would still be meeting the required parking for the number of residents that they have if they deleted that one space. However the architect, when I spoke with him about this yesterday, informed me that he felt that they could reconfigure a storage space behind the common wall with the parking area that would give them then the backup room, so they wouldn't have to delete that space. So they would have 20 to 21 spaces depending on whether they can make up that backup space. And then they would all be meeting our code requirements for maneuverability.

**Katz:** They have to meet the code requirements one way or the other?

**Stokes:** Yes. And the value engineering was already discussed. That was downgrades and value engineering. I didn't know what it meant either. That's covered in that condition.

**Katz:** That's very important, because --

**Sten:** That the neighbors get the quality materials when it's actually built.

**Stokes:** Was there one more point?

**Sten:** I think that's it.

**Saltzman:** It would also apply to the heating/air-conditioning units.

**Stokes:** It would apply to all aspects of the development.

**Katz:** I think. That covers it all. All right, roll call.

February 12, 2004

**Francesconi:** This was painful for the neighborhood to decide. It was painful for us to decide and hard for me to decide because it's a very close case. The reason it's a close case is the building is very large for the neighborhood. This is not a Belmont Dairy situation, because Belmont Dairy is on a main street. This is in a neighborhood. The process is very different. That's why it's a very close case. I can see why the neighbors and people in the neighborhood don't want it, but counterbalancing that in this close case, in my mind, I tried to put out of my mind the fact that the current lot is vacant and eyesore and nuisance, because that's not one of the standards, so I tried to put that out of my mind, but the other two factors that I, in a very close decision ended up voting for this. The first is, referred to at the end, the planning policies specifically allow group homes, including senior houses, churches and schools in neighborhoods, in residential neighborhoods. They have to meet a tough test that I'm coming to, but the -- and the idea is, you know, these are people that we want in our neighborhoods if they meet the conditional use test. And if Portland doesn't allow these residential care centers in residential neighborhoods, they're going to be pushed out. And that's just the way the reality of residential care, the way it's going. So that's a fact of life that we have to deal with, and our code is specifically set up. And frankly -- I know many of you want our senior citizens in our neighborhoods, and so do I, but the ultimate standard, too, was, it was the efforts of the Sunnyside neighborhood, the planning bureau, and it was really the mayor's leadership, because none of us thought this was going to work, and then it was redesigning this process, that made this much or -- this design much more compatible with the neighborhood in my view. Not -- it's not ideal. It's a close case. But given the balances we needed to make a decision and we're making it. I guess the last thing I would say in terms of process, you know, it -- it's our job to make tough decisions up here, but the more we can push things down to the neighborhoods, so you have to grapple with the tough thing we have to grapple with, I just think it strengthens the neighborhood association process and makes us a better city. So, you know, pain can cause growth. It can go the other direction, to abide by making your promises real and working to move forward as a community to make this work. Aye.

**Leonard:** I certainly respect what was just said, and people will have different perspectives, but my perspective is it is out of balance for the area. No.

**Saltzman:** Well, I just wanted to say that there's a lot of valid perspectives presented here today on this project, but I guess on balance I feel it is an attractive project, it's a necessary project, it's in a location that the applicant has all the legal zoning and ownership rights thereof, and that I think that this is something that -- well, I forgot what my point was, but this is something that I see as being -- well, I guess it was that the applicant has worked closely with the neighborhood association and concerned neighbors to totally revamp the design from earlier proposals, and I feel that it's important that we have to set a finish line, otherwise we risk maybe looking at something like this that has a flat roof, which I don't think anybody wants to see. But again the applicant has the full legal ability to do. So I think it's important to set a finish line and allow the applicant to cross that line. I don't think sending this back again would do that. Aye.

**Sten:** Well, I wanted to say I think there's been extraordinarily good work throughout this process. I'm very impressed with the quality of the arguments on both sides, which has made this somewhat difficult, and I don't expect to you be happy, but I hope the side that lost how dramatically better this proposal was, thanks to your work. I was in a very close time the last time around not going to support it because I didn't think it got there. I'm close this time, but I do think the design is that much better. I also just wanted to say that I believe on this is that the number of units and the coverage and the other pieces need some adjustments, but they're not as big as they look because of the existing conditional use. Somebody could buy this site and do something very, very close to this without ever having any legal recourse to take to the council, if they just make it three feet shorter basically. There's a few other things they'd have to do, but I believe that this is -- this new

**February 12, 2004**

design is far superior to what is going to end up on this site if we turn this down. So i'm not doing it out of fear, because I think this is a high-quality design. I think this is a type of use and type of population that we desperately need to work hard to get into the neighborhoods. But I think -- it is a very close call. I think it is probably too bulky for where it's going, but I don't see another solution.

I think in an imperfect world this is the best thing that's going to happen on this site. Had the developer not gone back out and really stretched themselves to this point, I would have voted no, but I think they've gotten over the bar with this design. So I am going to vote aye. Thanks to everybody for working so hard on this.

**Katz:** It's all been said, but I guess the challenge for all of us is to think about the process for other examples like this. Do we want to ask one of our design staff people to enter into the design process. And what does that then do to the quasi judicial land use process? I don't have an answer for that. And it was something that came about just off the top of my head to ask arun to go in and - - it was clear, a message, to the architect, to barry, and to the marquis company, that we were not happy with the way it had looked before, but there was an uneasiness by the council to shut that down immediately. And I sense that. And subsequently asked arun to come and push and pull, piece of dough, that was a good analogy. And there's no question that the design is a lot better. There are some angles that i'm a little nervous about and concerned about, but for all of the reasons that have been just stated by my colleagues, again, it is a close call, but I will support it. Aye. [gavel pounding] this is a tentative vote, and we need to come back in two weeks. Can you all come back in two weeks?

**Rees:** The applicant is designated as drafting findings, correct.

**Katz:** Can you do that in two weeks?

**Moore:** Just a minute. I think kathleen has a problem with that.

**Stokes:** It's my understanding that in a situation -- this is kathleen stokes, b.d.s. In a situation, the applicant's attorney would draft findings, send them to staff for review by our bureau and the city attorney before they could be finalized and sent to council. They have to be council one week before. So that would give one week for him to write them, us to review them, and -- it's not enough time. Sorry.

**Rees:** Generally, we don't need the week before.

**Moore:** We don't need the one-week review. That's just for new items on the agenda, kathleen.

**Katz:** We normally do it within two weeks.

**Stokes:** Ok. I was directed to take longer. I'm sorry. Ok, whatever you decide.

**Katz:** Two weeks.

**Moore:** Do you want to set a date now?

**Katz:** Go ahead.

**Moore:** 26th, we already have dignity village. Wednesday, the 25th is open, if that is ok. A day earlier. Wednesday, the 25th, at 2:00 p.m.

**Katz:** Ok, fine. Thank you, everybody. We stand adjourned.

At 4:30 p.m., Council adjourned.