

Closed Caption Log, Council Meeting, 06/10/10

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good morning, I'm austin mayor lee leffingwell. We will begin today with the invocation by the reverend harvey rhoades of the new hope missionary baptist church, please rise.

Most gracious and heavenly father, we just want to say thank you. Thank you for waking us up this morning, heavenly father, thank you for putting us in the right mind with the use of our limbs, right now we ask that you bless austin, heavenly father, put a protection around her, heavenly father. There are a lot of things going on, heavenly father, we ask that you bless her from the north side to the south side, east side to the west side, help me, father, we ask that you bless the leadership, our mayor, heavenly father, bless him. Our city council, bless them. Our city manager, heavenly father, bless him. We ask that we bless our police chief, our fire chief heavenly father, they got a great task ahead of them, heavenly father, but with you in the midst, all things are possible, heavenly father, we have a lot of things going on in our cities, we want to continue to be a great city in the united states. Local government is important, heavenly father, because it means so much to the state of texas and we just want to say thank you. Continue to put a hedge of protection around us, heavenly father, as we go on through this year. I just want to say thank you and in jesus name, amen.

Amen.

Mayor Leffingwell: Please be seated. A quorum is present, so i will call this meeting of the austin city council to order. ON THURSDAY, JUNE 10th, 2010, We're meeting in the council chambers, austin city hall, 301 west second street, also known as 301 willie nelson boulevard, austin, texas. We begin with the changes and corrections to today's agenda. 5 -- add reviewed by the water and wastewater commission. 7, add reviewed by the water and wastewater commission. 8, add recommended by the water and wastewater commission. 10, add reviewed by the water and wastewater. Items number 13 and 23, add the word related. 17, change the dollar amount listed from \$539,358 to \$110,358,000. Item 45 will be postponed UNTIL JUNE 10th, 2010. 64 add recommended by the planning commission. Item no. 65 is withdrawn. 66, add recommended by the planning commission. We anticipate at the appropriate time that item 69 will be withdrawn as well. However that can't be done until the posted time certain of 6:00 p.m. Additional changes and corrections to items 32 through 43, the public hearing date is changed to JULY 29th, 2010. Instead of june 2010. I will read the board and commission nominations, 27 to the austin airport advisory commission, george ferris, nominated by councilmember spelman. To the environmental board, james schisler, nominated by councilmember cole. To the waterfront planning advisory board, robin rather, nominated by councilmember morrison. The item includes the following waivers, to the construction advisory committee, approve a waiver of the attendance requirement in section 2-1-26 of the city code for service on the construction advisory committee, the waiver includes absences through today's date. To the electric utility commission, approve an ordinance waiving the

requirement prescribed in subsection 2-1-143-a of the city code for steve taylor's service on the electric utility commission. In addition, on or intergovernmental -- o our intergovernmental bodies, to the capital area council of government's clean air subcommittee, approve a resolution appointing councilmember riley to the capital area council of governments, capcog, clean air coalition subcommittee, replacing mayor leffingwell on that subcommittee. Our time certain items 30, we have a briefing on the waller creek district master plan. And a presentation on social media policy for boards and commissions. 30 we have our live music and proclamations. 00, we have the one public hearing, which as i said, we anticipate will be withdrawn at the appropriate time. The consent agenda is items 1 through 43, plus item no. 70. Items pulled off the consent agenda, items number 4 and 70 are pulled by councilmember cole. Item 13, is pulled because it's related to item 23, which will be pulled because of -- of excess number of speakers. 29 is pulled by councilmember morrison. The following items have been pulled because they have several people sigd up to speak, 5, 10, and 23. Okay. Correction, I earlier read that item 45 was postponed UNTIL JUNE 24th, 2010. 24th,. The correct postponement date for item 45 is june 24th. Okay. So council we have one person signed up to speak on item 30, which remains on the consent agenda. Jennifer aubrey. Jennifer aubrey. Come on down, jennifer is signed up against item 30, you have three minutes. mayor and members of the council, my name is jennifer aubrey. I'm one of the owners of 219 west, a bar and restaurant located on the southeast corner of fourth and lavaca at 219 west fourth street. I'm not against the keep austin weird festival. In fact I'm a native austinite, I believe that 219 west is the type of locally owned and operated austin original that this event claims to support. However, the street closures necessary for this event and the 5 k race in particular put downtown restaurants in jeopardy by causing so much traffic congestion that our customers can't reach us. The 5 k race could easily be held in the morning, a time when the street closures -- sorry I'm a little nervous, a time when the street closures would have a minimal impact on traffic coming to experience downtown austin's now vibrant and diverse food and entertainment options. As the race stands, cesar chavez will be closed to all vehicular traffic trying to come downtown during our peak business hours. We do appreciate the route being changed to exclude the second street warehouse districts, but that is not enough. Traffic congestion caused by the closure of the south first street bridge for the festival together with the closure of cesar chavez for the race will cause our customers to go elsewhere and avoid long traffic delays. The potential revenue loss is staggering. 219 West is just one little bar downtown. But on an average saturday night we generate more than a thousand dollars in sales and mixed beverage taxes. In 2009 we generated almost a quarter million dollar in mixed beverage and sales taxes, paid approximately \$5,500 in franchise tax, \$4,000 in licenses and permits, close to \$8,000 in personal property taxes. But that's not all. Our employees suffer from these street closures as well. They receive tips which are a percentage of their sales, if we have lower sales they make less money than normal and sometimes not at all because they might be cut from their shift if there are no customers to serve. Our employees earned almost \$400,000 in 2009, excluding management. And service industry is known to spend the vast joartd of their income locally. Majority. If this were the only main street closure or directly related to any of our neighbors I could be more tolerant. However there are street closures scheduled for three of the four weekends in june a difficult weekend anyway, started with the pride parade last weekend, the rot rally this weekend and june 25th. It's simply too much and makes us consider leaving downtown with less street closures taking away our business. I realize it may be too late to change the race time for this year's festival, but i hope that you will take into consideration the economic impact of the losses that we suffer when you are presented with street closures, and also not allow this 5 k route and particularly the race time to be grandfathered. Finally since

the topic is whether to waive the fee, please keep in mind the diminished sales from our restaurant. If a downtown is something you value, I suggest you limit the number of street closure that's have a detrimental effect on our business,.

Thank you.

Mayor Leffingwell: Thank you, I appreciate your comments. This is kind of an ongoing problem, struggling to balance community events veus the need to keep downtown accessible. We've been working on it for over 10 years, we continue to work to improve the situation. Thank you for your comments.

Cole: Mayor?

Mayor Leffingwell: Councilmember cole snooks i

Cole: I would like to ask to pull item no. 7. I have a couple of questions of staff.

Mayor Leffingwell: We will add number 7 to the list of items pulled from the consent agenda. Item 7 being pulled by councilmember cole. We have one speaker signed up on item no. 8. That is sapphire. Signed up against, you have three minutes.

Thank you, mayor, members of the council, I'm here on behalf of dnt construction, we oppose the ward of the 8 because dnt was the low bidder by more than a half million dollar on this project but was deemed non-responsive. We think contract and land management got that wrong because they think that dnt didn't have sufficient continuity of company structure. Dnt was formed october 31st, 2009, BY LOCAL Managers and employees of rodman llc, which withdrew from the central texas market due to economic conditions. By maintaining the company structure and keeping 200 local employees here in central texas and employed, dnt was able to stay in business with essentially the assets of rodman leaving rodman with its liabilities and responsibilities with work rodman had done before, but staying in business. Dnt put a bid down on this project half a million dollars lower. We believe city council or consider it much more closely, not only as a representative of dnt but as a taxpayer here in central texas and a resident of austin, watching city council and the city manager grapple with significant, unprecedented budget constraints, we see no reason why the city council shouldn't look much more closely a this bid and ensure that it accepts the bid from the lowest responsible and responsive bidder, which we believe dnt is. Dnt can do this and can do it for a half million dollar less than cash construction. We appreciate the -- the attention that contract and land management has given this bid, but we don't think it's been adequate, we don't think that it's been complete and most importantly we don't think that it's been correct. We urge you to look at it more closely and help us make a decision that will save a half million on this project, I yield the remainder of my time unless you have questions.

Mayor Leffingwell: Thank you.

Mayor Leffingwell: Council, I will entertain a motion on the consent agenda.

Spelman: I have a question on number 8 because of the speaker's comments. If somebody from city staff could discuss it for just a moment.

Mike trimble, contract and land management. I suppose you kind of want me to talk about the process that was reached on --

Spelman: That's exactly what I was about to ask you.

I didn't mean to anticipate your question.

Spelman: Exactly what i want.

But the process that was conducted is for our bids we have a requirement in our documents that a business actually be in business working under the business name for one year. At least one year. And so we did a thorough review of dnt's bid and there was insufficient information to determine that they in fact were in business for one year. There was a justification that there was business continuity with rodman. Upon much thorough review of that, we determined that there was not sufficient information to have determine that business continuity exist between dnt and rodman, therefore our finding of in response responsiveness was made. A protest was filed i reviewed the process and renewed it with staff about how we conducted that review. I did not find any error in the process itself and how we conducted that, so i found insufficient grounds for a protest hearing.

Spelman: Help me understand if you could what does it mean for a situation like this where you have an existing company which changes hands. What's our argument then for not being in business for -- for a year or more? What we try to do is establish that they are in fact the same entity, based on the review there was some particulars there with some of the transition from rodman, some of the folks there and some of the guess I experience and things that were being claimed that there wasn't information to fully substantiate that there was continuity. We try to look at several different factors but there wasn't sufficient information in this case.

Spelman: Our usual practice where there's not sufficient information, it may be true that there was business continuity between rodman and dnt, but they did not provide sufficient information in the proposal to verify that, is that correct?

We reviewed the information that's put before us. Yes, I guess you could say that's correct.

What's our usual practice in those cases? Do we go back to a business and say we want more information? Or do we have to review the proposal submitted?

Well, augmentation of the bid is not allowed. What we can do is if there's lack of clarity in the information that's provided, we can ask for a clarification. That was indeed done in this case. We asked for clarification, and dnt did provide additional information. Based on the review of that additional information, we were still unable to ascertain that there was business continuity between rodman and dnt.

Thank you very much, mr. Trimble.

Mayor Leffingwell: Motion to approve the consent agenda?

Mayor?

Spelman: Are you looking for a motion to approve the consent agenda or do we have one on the table yet.

Mayor Leffingwell: Don't have it on the table.

Spelman: I would move but please show me recusing myself on item no. 70.

Mayor Leffingwell: Dial that.

Cole: Second.

Mayor Leffingwell: Motion to approve by councilmember spelman who will be shown recusing on item no. 70. Seconded by councilmember cole. Any further discussion? All in taifer say aye.

-- All in favor say aye.

Aye. Opposed no. Passes on a vote of 7-0 with councilmember spelman recused on 70. So now, council, at the request of councilmember morrison, we are going to go directly to items 5 and 10, which we will take together. And at the request of councilmember morrison, and councilmember riley, we will limit public comment to 45 minutes. This will be -- you will be speaking one time on both of these items. And while we're getting ready to call up the speakers, I would just say parenthetically that these two items are both for construction projects on the water treatment plant 4 sites. If you are here to speak on the transmission lines from the site to the delivery point, that is not our subject for discussion for today. That study and engineering study is underway for that process right now. That specific item will be coming to council at a later date. Probably before the end of the summer. I will just offer that so that you can construct your comments accordingly. Councilmember morrison?

Morrison: Thank you, mayor, I wanted to comments about the time limitation. Oftentimes in the recent past we have limited the amount of testimony on each -- I think that it's very important for the folks that are down here that have new points that have never had an opportunity to -- to speak in public and to the council, to have their opportunity to do so today. I understand that 45 minutes will probably be enough. I understand that the presentations are efficient and effective. If there are points that are not able to be made after the 45 minutes, I would certainly like to know about that. Thank you. I would say according to our current sign up, there will be some speakers who will not be allowed to speak during this time frame. I would also remind everyone that this is not a public hearing. This is an item for council consideration. We do by tradition take public comment as a courtesy, to the citizenry and we will continue to do that. But in order to keep from getting bogged down, we are going to limit the public testimony on most occasions, on

this one by compromise we will limit it to 45 minutes. First speaker is colin clark. Colin clark. Not in the chamber of chamber.george elliott. George elliott in the chamber? Mary anderson? Not in the chamber. Next speaker is paul robins. Paul robins? Powell robins is signed up against, you have three minutes.

And he is in the chamber.

Paul robbins is in the chamber, I just saw him.

Council, to quote owe.

If you would -- you were turned sideways before, that's the reason I couldn't see you.

council, to quote the late, great folk singer towns van zandt, do you gamble? I see this more than anything as a game of odds. And any good gambler knows that you can't defy all of the odds all of the time. I see at least four things, four factors that you are gambling with. One is that you are expecting an increase in water use. If you actually look at the historic water use over the past five or six years, you will note that there has essentially been none. And the economics of water treatment plant 4 are based on -- on volume, catching up, with the increased debt if that doesn't happen rates will go up. Second, would be high bills. Austin has the highest combined water-wastewater rates of any major texas city, bar none, and water treatment plant 4 will send it higher. If you add in the other increases in costs, you're talking about something in the order, this is a very rough estimate, of about a 75% residential rate increase over a six year period. This is -- this is a fuzzy number, but is the best one I've got at this time. Will the public stand for this large rate increase, which could go even higher if you -- if you have to deal with the first factor i talked about, which is no growth in water consumption overall. The third factor that you are gambling with is a cost overrun, the city staff has promised you that due to the recession that we are still , you are going to get a good deal on this. But I consulted the international monetary fund fuel index and metals indeposition last night, they are on an inn exorable trend upward to where they were at their peak point in 2008. And finally, you are bam gelling with the possible -- gambling with the possible cross contamination of the aquifer. Which could in a worst case situation, which your geophysical tests have though the determined yet, it could render this site that you have chosen unusable. Uzzar sounding]

thank you, council, i appreciate --

Mayor Leffingwell: Thank you mr. robbins.

I appreciate your consideration.

Next speaker is karen krepps, all of the speakers are signed up against, karen krepps. Karen krepps is not in the chamber. Debbie russell. Debbie russell, not in the chamber. Warren johnson. Warren johnson. Is in the chamber. Welcome, sir, you will have three minutes.

Thank you members of the council for allowing me to speak this morning. My name is warren johnson. I am a resident of the northwest balcones neighborhood. I live on grand oak drive, which parallels old

lampasas road. My technical background is civil engineering. And the next several minutes I would like to address some specific issues of the water treatment plant 4 project. And that deals with the heavy trucking that's going to be associated with this program. At the present time, the routing of the transmission line between intake structure and 620 and the mcneil road tank at 183 is planned to go right under the old lampasas trail and spicewood springs road. The -- the tunnel is involved with this project is almost seven miles in length with a diameter of about 12 feet. And that is to accommodate the 48-inch main that goes to jester estates and an 84-inch water main that comes to the mcneil tank. This tunnel will generate over 180,000 cubic yards, approx excavation. It's approximately seven towers on the u.t. campus. To move this amount of debris and rock is going to require about 13,000 truckloads of a dump truck traffic out with material and the equal number of 13,000 empty truckloads coming back. We're looking at 26,000-truckload activities in that residential area. In addition to the tunnel itself, there are planned four access shafts to the tunnel. Each of these will be 50 feet in diameter, possibly down to 30 feet in diameter, each over about 100-foot in depth. Each of these shafts will generate another 30 trucks, 530 trucks or over 70 cubic feet. Specifically, we are concerned, our neighborhood, with the amount of traffic that will be generated by this trucking activity and basically a residential -- inasically a residential area. That is a concern for the safety of the students on canyon vista and the residents of this whole area that feedback into this very critical area. We don't know how long this trucking activity would take place because we don't know the destination where the trucking excavation will be dumped. We don't know the amount of excavations that might be coming out of each of the four access tunnel shafts and we don't know the trucking activity hours. But easily it could be over two years. So we are asking that the council delay any final decisions on this transmission line routing until alternate options have been thoroughly discussed. We thank you to hold off on that. Thank you very much, all.

Mayor Leffingwell: Mr. Warren, maybe you weren't here when we started this item, but this is not -- these items do not concern the transmission lines, you will have another opportunity after the engineering study --

thank you very much.

Mayor Leffingwell: Is set. Thank you. Next speaker is sharon blithe. Sharon blithe in the chamber? I see she's in the chamber. Jan moreman, jan moreman. Okay. Tamara all right. Sharon, you will have nine minutes.

Is there any way I can donate some of these minutes for joel --

we will be right straight down the line, we don't want to -- if you don't want to use all of your time say so now, it will be reserved for someone else. How much time do you want to use?

Six minutes.

Six minutes. Okay. We'll put you down for six.

I'm sherri blithe. I'm sharon blithe. I feel like city hall is becoming my home away from home, good to see y'all this morning, I appreciate your time. I also live in northwest austin, right at the ground zero of the transmission line, but that's not the reason that I'm here today. I'm here today -- I didn't decide until just a minute ago that I opposed items five and 10 due to the fact that I do not think that you can parse out the project between transmission lines and the plant. They are one project. They are affecting us and the whole city of austin. As the water utility has said, they cannot parse out the project into two different pieces. They are trying to piecemeal to come for 40 million, 60 million, another million or two, you can't see the big picture here with the way that they are presenting it. We are most concerned currently about the contractors that have made our -- already made our neighborhood unsafe. And the -- you want to pull up the powerpoint. This is our neighborhood. Next slide please. We -- go ahead, I'm going to try to get down to the pictures. Right here is the corner of where i live just about. I live up the hill from there. I go by that -- several times a day. I'm affected by serious lung problems and I will have to be moved from my home if you build transmission shaft -- if you build that transmission shaft there. I will come and ask you for my living expenses over the next three years if this is set in there. Go ahead. Here is an unsafe condition that your worry and wastewater protection shed people dug on that corner. One of our citizens out there about fell in those holes on sunday riding his horse. They left them completely exposed, unmarked, caverns near bull creek. They are using unlicensed drillers out there to drill into the edward's aquifer, currently. They are not licensed in texas. They are licensed in other states. This is very serious health concern because they have drilled into the edward's aquifer. And poured muratic acid into the aquifer. I think it's already been contaminated. The contractors that you have hired are making our lives very, very treacherous out there. If they cannot handle the very small projects that they are doing now, we can only imagine how unsafe the whole big project is going to be. But again I say that if you want to move the old plant outside the bull creek preserve to placate the environmentalists and then come right back into the same preserve and build a huge parent of that project right in the same preserve by bull creek into the aquifer endangering the species that live there, also, that would be your legacy if you vote these items today. On approval. Water utility caused the lines fatal flaws because they don't want to spend more money to really step back and think about the transmission mains, other routes that they could take. If you vote here today, on the -- on the plant, money, start that construction process, you are locking that transmission main, it's permanently up through our neighborhood. Water utility has not discussed any other routes, even though they will tell you that they have. They have not. All of the routes go up spicewood springs road. If we could get anything out of this meeting today i would direct council direct watershed protection, austin public works and austin utility, water utility to make our neighborhood safe and do not -- do not be digging big caverns using unlicensed drillers in the state of texas, which is completely against state law. We got a verification yesterday of the texas licensing and regulation agency, but they are use -- that they were using unlicensed drillers. I have that in writing from them. Please think about it. They are making our neighborhood unsafe. I can only imagine what they're going to do if they build the whole thing. So put me down as opposing the plan because I would guess that's what the vote is today. I didn't really want to do that, but since you are going to parse out the project and do different pieces, I would tell you that I'm going to be opposed to the whole project, thanks.

Mayor Leffingwell: Ank you, I will say once again. These are different projects. The route has not been settled. It will be settled at a later meeting. The engineering is underway. The route has not been

selected. In points of fact, even without a water treatment plant 4, there will have to be a transmission line through that area somewhere. And the -- the water --

when you say through the area -- water utility is currently looking for the best site with regard to costs and with regard to environmental impact and with regard to neighborhood impact. This will come up later.

Okay. Well, so your time expired, thank you.

All right, thanks. Jill rowe.

Welcome, you have three minutes.

Actually, I think that i have six, because I have three of sharon's, also, correct? That was her understanding when she --

Mayor Leffingwell: You have six minutes.

Thank you so much, mayor leffingwell. Yes, my name is jill rowe, my background besides the fact that I live in the neighborhood, my background is I have been in commercial real estate here since 1982. Frankly it's a rare day that I would speak on the same side of an issue as the people that I have come to know and enjoy recently from the s.o.s. side. So one must be at least a little bit perplexed why on earth would I be here to speak on the same side of an issue as they would given the business that I am in. Specifically what I would like to address with you now -- by the way, when you are looking at pulling permits the address that you are using is the plant address. According to the austin water utility, it is all one project therefore they are using the same address, that's why we are here today saying it's the same project because that's what they say in the address that they are using for drilling on spicewood springs is the 620 address. Y'all just got a quick orientation on that. If you can flip to the second slide, please. One of the things that i don't know that you all realize, one of the preferred shaft sites is this parks and recreation site that is from your own website where you are acquiring a site to the south of it. But the one that we have circled is labeled as upper bull creek park. When they went to parks and rec committee what they said was this is an unnamed park, it's actually not an unnamed park, it's actually upper bull creek park, actually the confluence of the head waters of the upper bull creek. Next slide please. With my background in commercial real estate, the thing that really puzzles me most, this is basically two miles away from any major commercial development. One of the things that when I served on the big box committee and also the austin design standards and got a long history of working with large major national retailers, one of the things that's drilled into the head of people in my business is the neighborhood doesn't want the impact of heavy development in the neighborhood, things that have a high impact need to be up in the commercial corridors, that's why I'm frankly so puzzled that a mine shaft would be considered an appropriate use in the neighborhood. Specifically this was actually taken out of you'll see at the bottom city of austin neighborhood planning guide, pages 30 and 31, facilities that serve community and regional needs but have significant impact from the surrounding area that requires special location and compatibility consideration. Purpose to serve sites or identify -- every bit of this was lifted directly from that document I have bolded and highlighted and underlined some things. Purpose, to

search or identify locations for facilities that generate a high level of community opposition. And number two locate facilities that may have many negative impacts away from established or planned residential areas. Next slide, please. Applications. Skip down to five and six. this is not a local utility facility involved in the-- involved in the distribution of utilities. This is, according to austin water utility, f it falls under the use category of major utility facility involved in the transmission and creation of utilities. By your own documents a completely inappropriate use in a neighborhood. If we can skip to the next page. One of the things that austin water utility has said t us, there is like the other shaft site. It's like onion creek, like what we are doing downtown. Frankly my partners and i did some of the land from intel, did long term leases with some banks, I'm pretty familiar with the downtown and cbd. It happens to be next to a wastewater treatment plant, obviously not the case with the spicewood site. Lamar shaft is downtown cdb zoning. We are in sf zoning. The riverside shaft is by the long center and palmer. You look at traffic counts, the plant itself 35,000 on 2222, highway 620 has a traffic count of 4500, we have two different roads that are designed for 1200 cars according to your own city's website, carrying 3600 cars. The krieg field shaft that's considered a major impact. Basically the thing that really struck me is that the other shaft sites that you are approving around town are all adjacent to existing what you classify as major impact facilities. The shaft site use category is major utility facility same as the plant itself. It's actually not the same by your very own documents it's not appropriate in a neighborhood. All that we're asking is that this be located in commercial corridors. I recognize that's not the vote being taken today. The vote that I would ask to be taken today that is you street postpone it until you can figure out how to locate things in an appropriate location. If I can hear with a shopping center to build, you would want me to come back when I have an appropriate location that's not too by the neighborhood to build it. Let me show you the shaft sites themselves. The first one the shaft site is too small. They are using right at an acre here. They have no stacking for trucks. Y'all were all over us on stacking on the bank sites. The shaft site shown to be we think under 30 feet, we have asked for right at 30 feet we have asked for there's no soil site on this location. That's shown. Obviously they are going to need a soil site. No restroom. No parking for the workers. It's literally on this particular site doesn't even fit also the creek is right where the photograph drops off. Then the next site, one of the other ones, this was interesting I made a written request may 7th got a response. Literally cut and pasted from a document. Auto the proposed meyer site will you please forward a copy of a preliminary plan similar to what's been distributed on the park site above. And I have seen -- anyway, they said one didn't exist and we --

Mayor Leffingwell: Thank you.

This one does. Thank you. We request a postponement. Thank you.

Mayor Leffingwell: Eric deal.

Three minutes? I would like to thank the council members for allowing me to speak today. I'm another resident in north austin. Like most austinites i assume that our city leaders and austin water utilities had our best interests in mind when the siting of water treatment plant 4 was necessary to provide an adequate water supply in austin. The more I have learned the more I feel like it's being rushed into implementation after being rushed after languishing for the last 25 years. It's irresponsible for us to commit money to the construction of water treatment plant 4 infrastructure before the environmental and

design aspects of the entire system are complete. Wtp 4 was moved out of the balcones canyonland preserves for environmental reasons yet austin is willing to commit to the plant infrastructure before determining whether it's feasible to build transmission lines through the same area. Committing the funding for the plant at this point taints the decision making process of the transition line since it presumes their existence and the impetus will be to build them at all costs without regard to public input and environmental concerns. The current design is you were are and implementation with the idea that construction is cheap. Equivalent to buying a new house because the market is depressed disregarding the fact that awu has less income and doesn't meet the capacity in the near future. This will initiate a process of spending 500 million plus interest on a project not completely designed. It's irresponsible to commit this kind of funding at this time. The council should defer funding until all relevant design and environmental phases have been completed. As a monopoly austin water has no incentive to be a cost effective water provider. More appropriate motto might be water at all costs. Water rates have already increased and further increases from the wtp 4 expenditures will be more incentive for austinites to further cut water consumption. This will drive down the peak demand as well as austin water utility revenues which will tonight strain austin's budget. Compare this to austin electric which has stressed conservation as the number one solution to capacity it will take time, but austin residents will adjust to landscaping -- adjust their landscaping and water use to prioritize conservation, the drought last year was a wake up call and citizens are making changes in consumption patterns. Water rates last year 9 percent, scheduled to increase another 10% this year. Further unspecified increases are planned to pay for the bonds that will be required to build the new plant. Awu is currently forecast to lose \$33 million this year because we are not buying enough water. The shortfall caused by the drought last summer as well as the with the conditions we are currently experiencing. Currently austin has the ability to conserve water, continuing to misuse the water resources available to us. It does not make sense to approve the 44 million to approve construction when the austin water utility is not close to completing the environmental assessments, parkland permitting and approval from texas fish and wildlife. These are just a few reasons why awu failed to get a recommendation at the water and wastewater meeting. To begin construction without completed the basic approvals will be irresponsible for taxpayer moneys thank you and i.

Mayor Leffingwell: Thank you. Next speaker is dana blanton in the chamber? Demond you have six minutes.

I believe that I have nine minutes. I have another three donating to me by --

I am showing you have one person, dana blanton donating time. Do you have another person?

Yes,

Mayor Leffingwell: What is her name?

Tammie?

Tammie? Okay. Tammie keggy. Okay. You will have nine minutes.

Thank you.

My name is , I'm an engineer. Four weeks ago I knew absolutely nothing, I was blissfully unaware about any plans to do anything related to or shafts or water treatment plant plant. I didn't know they existed. I look for information, i look for facts, I look for consistency in what I hear. Today I am here because I'm really concerned about what I have learned. This is the heart of the problem that I see from my neighborhood and from the neighborhood around us. Little red circle there is a shaft. The little blue line running from the left-hand side to the right-hand side is a tunnel. That tunnel is seven to eight miles long. It's about 10 to 13 feet in diameter. And the little red dot in the middle, which is the heart of my neighborhood, is where from my best understanding a significant perhaps majority perhaps all of the rock wall from seven miles of tunneling is going to be pulled out, loaded on to dump trucks and trucked out of my neighborhood. From the four weeks ago when I got involved in this project and learning about the project, I am convinced that we have not been told enough. We have not been told early, we have not been told openly about the impact on our neighborhood. When we heard about this, we heard about it in terms of water treatment plant and jollyville transmission main. I think that's the lake area, I think jollyville that's miles off the other way. I don't have a postcard in front of me that says spicewood shaft in your back yard. It doesn't get my attention and it didn't until four weeks ago. Bottom lines I actually don't think that y'all have been told some of these things clearly either. Next slide. This is the area around my neighborhood. The red dot in the middle is what feels to us increasingly like ground zero. This area is not commercial. It is residential. It has about the best middle and elementary schools that there are in austin. We probably pay I'm guessing somewhere in the highest tax bracket that areas around here need and it is quiet. It is really quiet. When I walk out into my back yard in the morning, the loudest -- in the morning, the loudest noise that i hear is a bird. When I walk out in the night the loudest noise that i hear is coyote. On the left-hand side side is the u.t. tower. Pretty big square at the bottom. 70 Yards straight up. Seven miles of tunneling, 37 feet in diameter is seven u.t. towers. I'm looking at something potentially up to seven u.t. Wers worth of rock over three years being pulled out a quarter of a mile from -- quarter of a mile to half a mile from hundreds of homes and trucked out over three years. How many dump trucks is that? Turned out again simple arithmetic, 13,000 dump trucks, the numbers may be over by 20%, 30%, 40%, we are guessing each as much as you are guessing. 13,000 Dump trucks end to ending from here to san antonio. The 13,000 empty dump trucks is a round trip, two lanes, end to end from here to san antonio. I'm going to talk in the next few slides about three or four major areas of impact having to do with safety, having to do with noise and debris and blues, all of which -- pollution and all of which add up to a serious amount of disruption. I want to take just a second and talk about the relationship between the little red circle that I'm pointing at as the heart of my problem and the potential separation saying well that's a different project, this is a different project. As an engineer, if you came to me and you said I want to fund the building of the deep water horizon, going to dig -- going to drill holes in the middle of the ocean two miles deep, let's fund it and oh, by the way, separately, let someone else worry about, guess what, blow out prevention. As an engineer, I would say whoa, whoa, whoa, not completely separate here folks, these are tied together. Okay? Let's go to the next slide. What do 26,000 dump trucks mean, if you run 12 hours a day in the evening, it's a truck every five to seven minutes loaded up with rock, dirt, debris, toiling up the hills, going into engine brake mode and screaming down the hills, every five to seven minutes. There may be additional shaft sites that are planned, I'm not very sure about this right now again. Some of this is sort of not covered under the design phase we don't know yet. I still need to know what are the possibilities. I

don't. There will be congestion, right now there are areas of the road here that are single lane, there are areas that are double lane, there 30 in 30 in the 00 in the afternoon, there are lines of cars, lines of cars stopped dead twieght turn into the school -- waiting to turn into the school to pick up their kids. Stopped dead. And you are going to throw into this mix five to six -- every five to seven minutes a dump truck. There will be additional, this is not even counting the additional materials, pipe, seven miles of pipes potentially, seven miles worth of concrete, seven miles worth of addional infrastructure. There is a possibility of and merge getting disrupted. Next slide, please. Back on safety, kids walk here, kids bike here. The school children get outside their school and they run. They run on the sidewalk, they run out from the track. They do cross country run. This is not a good idea. There are blind intersections, sharp turns, basically that's a safety related problem. Next slide, please. Air pollution. One truck, apparently, can contribute the equivalent of 130 cars worth of exhaust. So let's add a truck every five minutes, doesn't sound that bad. Let's add 130 cars every five minutes, sounds kind of different in terms of potential impact on air pollution it would be up to quite a bit more than what you think. A lot of this boils down to what jill said earlier. You have got to do this, if you have to do this, find a way to do it that doesn't impact the neighborhood. Find a way that has -- take a different route. The actual information on the evaluation of alternatives, we were sent back one paragraph that said we looked here and it doesn't work. That's not good enough. Next slide please. I took a look at noise impact. On the left-hand side what you are looking at is a hand held noise meter. Costs me \$30 from express.com. It's a manual from the manual from the federal transit authority. A 2 to 300 page manual that talk abouts noise impact valuation. I learned more about noise impact than I ever cared to know. The top right of this site shows one of the graphs from that manual. That graph it turns out people have actually thought about what noise impact means. And they said there's a category that's no basket. There's a category called moderate impact, there's a category called severe impact. They actually factor in two things, total noise, vibration at a certain level, relative noise, if you are on a frail in the national -- trail in the national park and somebody's cell phone rings you will get really irritated. If you are in downtown you don't even notice it. They combined all of this stuff, they said this is what this means. I ran the numbers and ran the graphs, the next slide is the result. The red dot in the middle is ground zero. The red circle on the outside is 5,000 feet out from ground zero. Ground zero is in a canyon. Try standing in a canyon and making a noise. It is a megaphone. There are a couple of places here where the terrain will shield the areas, a big part of this area will not be shielded. According to the fta, actual language from the fta --

Mayor Leffingwell: That is your time.

Thank you, sir, please vote no or vote delay.

Mayor Leffingwell: So far we have used 30 minutes. That leaves 15 minutes. The next speaker signed up scott henson. If all of his testimony donors are here, he will be the final speaker. So jacob , all right. Right. Erica baylor. Chad joe carpenter. Joe carpenter. You have 15 minutes and you will be the final speaker.

All right. All the pressure is on me then. It's good to see you today, my name is scott henson, I'm here onehalf of the save our springs coalition. It's good to see y'all here today. I'm especially pleased to get -- to come visit with -- with -- after the appointment of the new city attorney, I've gotten to know your family very well in the course of all of the stuff over your brother and your mother's become very dear to me, I

want to welcome you, I'm happy to see you here. I'm here today to talk to you about the effects of the water treatment plant on residential utility rates because I think that something that's not been discussed often enough and that I think is increasingly clear to me is that -- is that water treatment plant four, once you start the construction, once you get to the point where we're going to go ahead and spend all of this money, then you have also -- you are simultaneously committing yourself to what turned out to be large residential utility rates. I have tried in this document that I have distributed to you, titled the perfect storm, to quantify that in some way. But just for a moment's background before I get to the nitty-gritty. The reason that I titled this the perfect storm is because that's actually the phrase that was used by the Austin water utility budget officials when we asked the question, well, okay, what's going to happen now that we're \$43 million under budget this year and all of the factors that are currently causing us to be 43 million-dollars under budget appear to be going forward into the future, we're going to still have conservation, we're going to still have, you know, rainy seasons, but not every year is going to be the most extreme droughts that we've had recently, there's -- there's no indication, although Austin is doing better than many places, that the economic downturn that has reduced the number of hookups and costs the utility money on the margins because they are not adding as many new customers, is going to end certainly by this summer when you all have to set your water rates and so -- what they say is that this is a perfect storm. I find that incredibly challenging, if any of you all have read the book or soon the perfect storm, it's about a ship captain who against all good advice steers his ship into a mighty tempest and everyone dies, I think that's probably an apt statement. I think they are pretty much telling it like it is if you all will just listen to what's being said. It's been incredibly difficult and especially going back through last year's budget cycle and -- and all of the discussion on rate setting, looking at the backup that you all were given, the water and wastewater utility was given, the public information request that has done over the years. It's frankly very difficult to figure out what was the residential rate impact and what it will be going forward into the future. If you will look on page 5 of this -- of this document that I have handed you, at the very top on table 1, is a table that I'm not sure if it's been distributed to you yet but it was given to your water and wastewater budget subcommittee last week. This is the Austin water utility's schedule for their projected rate increases over the next six years. I have also added in the current year's rate increase because you all already began to raise rates last year in preparation for the water treatment plant 4. As you can see, when you total up all of the combined rate increases, it's a fairly substantial amount. 28.96% By 2015. However, this is the piece that I think, we said earlier, looking at all of these in a very narrow atomic fashion, not looking at the big picture. Next thing water treatment plant, the big picture, is that you have done in 2008 a cost of service study on your utility rates and what that cost of service study determined is that commercial and industrial payers were paying about 9% in aggregate more of the utility revenues than they should be. That if you were to have an honest, fair, cost of service study where everyone pays their own rate for reasons, for example, because they have constant usage year round, Samsung doesn't go up and down because they water their lawn more, they are using the amount of water they do because they are using it for industrial activities. And so for reasons like that, and many others, the cost of service study recommended shifting that 9%, which is a lot in aggregate for the whole utility, from the commercial and industrial to consumers, to residential consumers. And we found out in the documentation given to water and wastewater last week that they will be doing that they say over the next five to seven years in one to two percent increments per year. Against this isn't one to two percent of the rate, it's the overall utility revenue that they are shifting. So it has an even greater impact on rates. So again very, very difficult to -- to -- to identify exactly what the residential rate impact would be because not

enough information has been given so far and I'm especially -- I'm hesitant but we're going to do it anyway to attempt this calculations in front of mr. man who is -- mr. Spelman whose criminal justice work I have relied upon for many years, I know somebody will catch me if we get some of this wrong. I have known bill too long. It's -- but -- it really is true. In my criminal justice work and other topics, I have used it a lot, a lot. If you look at table 2 down here just lower, if we apply the same rate structure that was applied in the first year increase, we only have one year of increase so far of the six to go by, no one he -- we have ton told we're not going to see the new estimates for what the residential or projected going forward until late july, that one year is all that we've got. But if we assume in one year or in that one year -- excuse me, that the shift in burden in that one year will be the same going forward. That -- was a one to two percent increase and that -- will be the same going forward, then the residential rate impact is what you see in table two which reaches all the way up 82, 47% over this -- 74% over this five year period. If you started telling your rate payers their rate is going to be raised by 74%, there would be scandal, that data has not been generated by and you yet. It could be worse because of this perfect storm the city is describing. There's no reason to think that it's not going to continue at least in the near term. So I went ahead and calculated -- if we assume that this -- that we need 74 times the amount of last year's rates in order to pay for all of this debt, and then we assume -- rather than these incredibly optimistic graphs that you and you will see that just say that the utility sales and revenues are going to go up and up and up add infinitum, if we assume instead that the reve projections are lower at the same rate we are seeing them this year, you actually get rate hikes above 90% if it stays that way over the whole period, if your water sales are as much lower over the five or six years as they are this year, it's a 94% rate increase. So what you are voting for today is to basically commit to a 74 to 94% rate increase. And the reason is once you have actually started the construction project, it's simply going to be very, very difficult for you to step back and all of these other things are external things happening to you. The water conservation is not going away, the economy is really something that is beyond our control as to what that's going to end. Heaven knows we can't control when it rains. Rejecting or postponing water treatment plant 4 is the only optional thing that you can do to stave off this rate increase or to keep rate increase to mitigate it and keep it from being as high as it otherwise would. And I would add when you looked -- when I looked and I have some other charts in here that came from information given to the bond holders and in y'all's most recent bond perspectives, I wanted to see what you were telling the debtors or people who were purchasing your debt, i wanted to find out how much water ses you were telling them that we would need to pay off those bonds. And that chart actually is on page 7 if you vault that over there -- if y'all have that over there. But the chart number 1 shows the city's projections to the bond holders on how much water they're going to sell. As always, it's just a constant increase, everything is -- always going to get better next year. And then below you see the chart that -- that -- of actual pumpage, again reported to the bond holders. You see that -- that -- for the most part, we haven't even reached the beginning of their estimate and they say we will just keep going up add inminimum night stomach. I -- infinitum. We are overestimating sales and we are ignoring the perfect storm is going have on rates. I don't think anybody has really been saying forth rightly this is going to mean rate increases that high. I'll just close unless y'all have any questions by mentioning my own background on this which admittedly is very different from some of the other folks who have been estimating this from the side of the water utility. Again, it's -- as mr. Spelman will recall, councilmember spelman, there WAS A TIME IN THE 90s When -- when I was for a dozen years a professional opposition researchers, including here in town. And during that period there was a moment in time when the -- when kirk watson was elected when I had actually -- my opposition

research had been used in all of those various campaigns, a lot of folks think back to that period and the environmentalism and the salamanders. But if you look at what was actually being used in the campaigns, what was actually going out in the direct mail, what was on the television from brigid shea on down to manuel zuniga who ran against bill spelman who basically lost because he voted for increased rates when he was on the water and wastewater commission, that was the bottom line, what was used, right down the line the -- every year the politicians or the political consultants would get in the room and say well what's the best attack, is it the salamander, is it barton creek? The ones that made sense to spend money on were you raise my rates, you raise my taxes. And that's what really gets under people's skin is that they want this place to be affordable. And it's -- it's becoming less and less affordable for a lot of reasons and for a lot of reasons that have to do with y'all, but none more so than when you are directly increasing their costs in such a -- such a large and almost cavalier fashion where it's not even really discussed before it happens. And so -- so I would encourage y'all before and we have among our recommendations and I just really can't stress this enough, is that you all need to do more due diligence before you go forward. I would -- I would love to see you have staff estimate the total residential rate impact of everything, not just the one narrow thing, but globally what do all of these things, the cost of service study mean, the wtp 4, there's all of these things that are happening at once that are all combined into mushroom water rates and no one is talking about them because the -- the rates are different from the plant which is different from the transmission line, which is different from whatever else that we're going to segment out so we don't have to talk about it all at once. It's really important to figure out how much globally all of this is going to cost. Similarly, we think that -- that doing something this expensive that's going to raise rates this much should frankly be postponed until after you've implemented the cost of service study. You are choosing to do two things that are incredibly expensive. Doing this simultaneously puts too big of a burden on ratepayers. You could choose I guess not to put that burden on ratepayers but the city of houston recently found out that will come bk to bite you because they are bond holders -- their bond holders became unhappy with them because all of a sudden they had nine figure deficits just like y'all are headed that direction, they were about to have their bond rating lowered. And just within the last month, had to increase their water and wastewater rates in an emergency fashion by 30% in order to keep from having their -- their bond ratings reduced. And I guarantee when you get to that point, you're going to have a lot bigger problems than -- than we're even talking about now. It's better to nip this in the bud ahead of time. I would be happy to answer any questions but i appreciate your time.

Mayor Leffingwell: Time has expired, all time has expired, thank you.

Spelman: Have you or your staff calculated the cumulative effect, not just the water treatment plant 4, pu the ongoing maintenance of our plugging the leaks and all the things we're doing that is going to require capital improvements and therefore bonds. Have you looked at the cumulative effect over the next two years of our planned operation on residential rates?

Yes. Every year we do a five-year forecast for the council and the community on projected rate increases. We just updated the council on one of their budget working sessions on that five-year forecast. We typically roll the rates up in a combined impact, which includes both not only just water rates, but also wastewater rates. We were projecting in essence levellized combined rate increases of approximately four and a half percent through most of the five-year forecast period, I believe in 2012 that had increased

to five and a half percent and by 2015 we had projected i think two and a half percent. However, that's a combined rate increase process that each individual customer class is -- their individual rate increases is dependent on the cost of service, which we update every year based on we plug new numbers in based on the various demands of the different customer classes and other factors. So it can vary wildly across customer bases in terms of individual rates. Even within a customer class if you're a high, say, residential water user and you use water in the upper blocks a lot more versus the lower blocks, you can see significant differences in your rate increase because we change -- we typically try to push more of the dollars in the upper blocks as a conservation tool and try to keep the lower blocks potentially a little more affordable. Part of our cost of service, we have updated the council that there's a subsidy that's been in place for quite awhile between large industrial and commercial accounts and we would like to fade that out and get down to true cost of service over the next five to seven years and we're going to try to target one to two percent per year over that period. And last year was the first year that we did that and we would like to try to do that approximately again 2009 two percent each year.

Spelman: One to two percent per year increase in residential rates to offset the fact that for a long time residential customers have been subsidize bid commercial and industrial customers and try to reverse that, is that right?

Yes. That's a revenue neutral activity for the utility. That amount of funding is reduced from the other customer rate, commercial industrial, and then brought into full cost of service for residential.

Spelman: hanson, his table 2 had an estimate for residential rate hikes over the 2010 to 2015 period which accumulated to about a 74% increase in total water rates for residential customers. Now, obviously it's complicated depending on what block you're in. Maybe what time of year we're talking about and how much you irrigate and so on. Do those numbers roughly square with the numbers you've been talking about or that you showed the water and wastewater commission last night?

I don't know what went into these calculations. I can't speak with any kind of knowledge of these projection there. My reaction to that is no, that there would be an overstatement of the impact on residential customers. My assumption is that he just took the first year of the cost of service study implementation for residential rates and projected that forward through the five-year period, but I really would need to understand better his methodology and consult with my own budget and finance staff. In many ways, four or five years from now, you cannot predict the actual detailed rate increase for each individual customer class because that cost of service is being updated each year, they're plugging new numbers in, you're deciding how much of this subsidy to phase out. That's why we have a cost of service model because each year you project that in. And it also depends on the variabilities that we talked about, weather, cash reserves, how effective conservation is, that those are kind of dynamic variables that the longer you go out in the future, it's harder to predict the exact rate increase. You could do a projection, but it's hard to nail down the exact increase.

Spelman: Every year we're doing a cost of service study and every year we're recalculating what that subsidy and cost ceiling this is. Roughly what kind of numbers are we talking about as far as the cross subsidy goes? How much lower are residential rates than they should be if we were -- you're not

suggesting we do this. You're not suggesting we eliminate that cross-subsidy right now in all one fell swoop, but phasing it in over a long period, but about what percentage are we talking about? Five percent, 10%?

Nine percent currently.

Spelman: So if we were going to phase this in over a 10 year period, it would be something like two percent over five years is about what we're talking about, 1.8.

Over you said a 10 year period.

Spelman: I misspoke. If we wanted to phase this in over a five-year period, take that nine percent, 83 or thereabouts is what we're roughly talking about.

Yes. And if you average that out, again, really it's the council's option on how fast and how much they would like to phase that out. Our recommendation is to try to do it about one to two percent per year, but again, based on economic conditions and other factors, you could do a little more or a little less. You could even stretch that period out longer, five to seven years. It could be seven to nine years. It's really --

Spelman: If this council were to ask you at some future date to calculate those percentages, even -- we couldn't hold you to this obviously because the cost of service study is done on an annual basis, but just for planning purposes if we were to ask you to give us a sense of what kind of rate hike was in effect over the next five years, could you do that for us?

For all the customer class.

Spelman: For all customer classes. I'm particularly interested in residential customers, but we're interested in all customer class. Would that be possible?

Sure. I think we can attempt to provide that kind of information. We did it at a rolled up level, a combined rate level previously, but we could try to project what that would be. But again, it's very difficult, particularly as you go farther out, to project individual rate increases for customer classes when you haven't run cost of service model for outer years, but that would get more and more difficult to predict with precision as you went farther out in the period.

Spelman: I understand. Again, you have to plan on a long-term basis, even though you haven't got really accurate information on a long-term basis. We have to make some assumptions as to figure out what we're talking about anyway. So I'm comfortable with a little bit of imprecision in the last few years if you're willing to give us some numbers. I think it would be reasonable for you to expect that we'll be asking you for that. I've got one last question for you. Has anyone in the felt given much thought as to what the effect of a relatively large cumulative increase in the price of water is going to have on university of water by residential customers? The use of water by residential customers?

Yes. As a matter of fact, one of our conservation strategies per council direction has been to increase upper block rates and to add additional block rates and make the block rates significantly higher. Our block rate for residential is I think right around 10 or \$11 per thousand gallons. The first block rate is right around two dollars per thousand gallons. So we do build into our projection the effects of conservation, including pricing effects. You might remember when we gave you the update in the last month or so in your five-year projection that our revenue models we are projecting a lower average yield per customer attributed to conservation. We're currently projecting six percent in summer months, lower yield and a lesser amount in the winter months, I think an average of at least four percent. And a part of that projection of lower yield is on the cost pricing of water. Water.

Spelman: I remember when we were talking about water treatment plant 4 a few months ago, looking carefully over your consultant's projections for peak water usage on an annual basis for the next 20 years or so. And noticing that the price of water was not one of the variables we used to predict, which is perfectly reasonable if you don't expect an important price change. But we're talking about a residential price hike of somewhere in the neighborhood of 74%. Maybe it turns out to be something smaller, but if it's in the neighborhood of 74%, I just did a very quick and dirty check while Hanson was talking for what estimates academics have found for the price elasticity of residential water use, and a whole bunch of stuff, which was accessible and it looks like it's about negative .2. Doing the math it looks like we're talking about a 15% reduction in residential water use on a gross level associated with that 75% rate hike. So if we were to have a rate hike that high, we could reasonably expect to sell a lot less water, 15% less water, to our residential customers as a result of that rate hike. That was more of a comment than it was a question. But is this the sort of thing that would feedback into your planning as to how much water we would need to sell and to be sure that we would actually be able to make the expectations of our bondholders?

Yes. We update your revenue models, but there's a lot of other factors and factors that have I think a lot more effect than just price elasticity. We have been profoundly affected by weather. Hot, dry weather we'll exceed revenue projections. Very wet weather we don't. There are other price elasticities. We're reducing through the elimination of the disinfectant the cost of -- disinfectant the cost of water for commercial and industrial customers. I would also comment that we're talking about one component of the cost to a residential customer, that's the rate. The other component is how much water they use. And while rates may be higher, through our conservation efforts, the total budget that they're going to their water bill each month may be very stable or increasing because of the old low flush toilets. We pay for those subsidies. The changing out of the old Augustine grass. While the rate may go up, I wouldn't necessarily conclude that that means the cost of a customer may go up. So I think that's a part of the price elasticity too is while the rate may go up, customers may see lower water bills that may not -- it may not change their demand as much. I think that those are a lot of dynamics that are hard to gather. There's some fuzziness to that. But I think from an economic model, we would expect people as prices go up that there's a response to that like any rational purchaser of goods would have.

Spelman: The price goes up, the demand we can expect to go down at least somewhat.

At least in an isolated kind of incident.

Spelman: Thank you very much. Appreciate it.

Leffingwell: Before we make a motion I'm going to read into the record the other folks who had signed up to speak against. Gutman ross lien. Bill lunch, ryan rogers, mary arnold, tom hays, raquel aguirre. Pat broadnaks, robert corbyn. Roy whalely. The following are signed up to speak and signed up against not wishing t andrew hawkins, carol torgson, joseph we'ller, scott johnson. And I would ask everyone in front to take their seats or move to the back of the room so that the people behind you can see the proceedings. Councilmember cole.

Cole: Greg, I have a couple of questions for you real quick here. I think everybody on the dais recognizes that this is a huge contract for us and i want to know what we are doing to contain costs and monitor costs and inform council of cost changes. Across the utility or just on --

on these two items on the water treatment plant 4.

In terms of containing cost, we are -- during our design process we always perform value engineering analysis where we look at the recommended solutions for the plant infrastructure and perform outside value engineering on that to reduce the cost of those design elements and look at additional options. We're using the construction manager at risk delivery method, and through that process we're able to integrate the constructor into the design team and then they can look at the design and determine options to improve constructability and reduce cost through those kind of methods. We are bidding the project in a time that we're seeing some of the very best pricing and competition for water and pipeline infrastructure, so again, that's another one of the ways that we're working to try to control cost on this project. We are configuring the bidding where we have a lot of deduction kind of bidding alternatives, so as we get the bids in we can make different decisions about how we can configure the plant so we can assemble the plant through the bidding process in a way that best matches the budget and the cost and goals that we're going to meet. We are routinely engaged in the processes of trying to control cost on water treatment plant 4. But we do balance that. We're not simply just driven by trying to reduce cost. We have kind of -- several bottom lines that we try to meet on a project like plant 4. One of them is cost, of course, butt other is environmental projection. We're very committed to seeing this project constructed in a way that meets all the environmental goals for the council and the community. We also have I guess what you might call social goals that we have to meet. Today we heard concerns from neighborhood groups about the impact of construction in their neighborhoods, and we appreciate and are very sensitive to that and are going to be very engaged with the neighborhoods in solving these problems that are very classic, noise, traffic, disruption to my neighborhood, that again we're committed to seeing the project be successful from that social bottom line also. So --

Cole: Thank you, greg. I think you know that the entire council is committed to meeting environmental goals on this project or whether we support it or not, since we are doing it, we certainly want to do that. And at the same time we want to be committed to as much cost containment as possible. So as your department becomes aware of any significant deviation on either one of those items, i think that we want to give clear direction that we want to be apprised of that. And with that said, mayor, i would move ploofl on items -- move approval on items 1 and 10.

Leffingwell: Councilmember cole moves to approve items 5 and 10. Seconded by the mayor pro tem. Councilmember morrison.

Morrison: Thank you. I want to follow up. ma mr. mazaro. After the long and detailed discussion between yourself and councilmember spelman, i want to follow up and ask that you get back to us with an answer to -- in simple terms, to a simple question. It's been suggested that this could raise residential rates 74 to 93 percent. And if you could get back to us in simple terms of why you think that's not true, it would be very helpful.

Leffingwell: Further discussion? All in favor say aye? Opposed say no. It passes on a vote of four to three with councilmember riley,orrison, spelman voting no. So with that we'll move on to some other unfinished items beginning with item number 4. Councilmember cole.

Cole: Yes, mayor. I wanted to briefly point out that this was an item on our 2006 bond election. And since we have been spending a lot of time talking about historic preservation and doing that throughout our community, that this is an item that the city has actually led on in creating an african-american cultural and heritage facility. And with that I would move approval.

Leffingwell: Councilmember cole moves approval of item 4, seconded by councilmember morrison. Further discussion? All in favor say aye? Opposed say no. It passes on a vote of six to zero with councilmember riley off the dais. I don't think we have time to get into our morning briefings, so I'm going to go ahead and go through these unfinished items as quickly as we can in order. Item number 7 pulled by councilmember cole.

Cole: I would like to talk to someone, a lovely lady from dsmb. This is an item that i noticed that did not meet its african-american goals, in particular the goal was 28, and it had a zero percent. So we didn't make our good faith effort. I wanted you to try to lay out why that is.

Good morning. Veronica lores. In item 7, the apparent low bidder, cash construction, was found compliant through good faith efforts. However the initial determination by our department was actually of noncompliance and i apologize that information was not in your backup. We should have amended the information in the backup. We did find them non-compliant. There was a protest requested by cash construction. We did have a protest hearing with an independent hearing officer, and the independent hearing officer found in their favor and overturned our initial decision. So it was brought forward as being compliant through a good faith effort as a result of that protest hearing. Because of this series of events, I've asked a representative from cash construction to be present to speak to their good faith efforts.

Cole: Are they present right now?

They are present today.

Cole: May I please have them come to the podium?

Leffingwell: While they're coming up, councilmember, we do have one speaker signed up.

I'm vice-president of cash construction estimating department.

Cole: We have been very, very concerned as we have a committee dedicated to try and help the city meet its minority participation goals. And in particular I've noticed recently that there has been a rapid decline in the african-american participation. So I would like for you to briefly lay out for my colleagues what efforts you have made to ensure that we have as much participation in that area as possible. Your outreach good faith efforts.

In our bidding process, we solicit all the certified firms in the tsmb solicitation book, no minority what minority they might be, eth advertisety, we treat everybody fairly and we always take the low price. And the ones that do not have the low price we try and negotiate with them, give them a second chance, and that's part of our good faith effort as well.

Cole: I would just encourage you to continue outreach efforts and make contacts with the trade associations. I notice that you are a pflugerville company and i know that there are a lot of african-americans moving to pflugerville, and of course, we care about african-americans in the region, and also in particular in austin. So I would do all to support you in that effort.

We do. We do contact all the trade associations. We also place ads in the newspapers. We fax out solicitations and we also mail out solicitations.

Cole: Okay.

And on congress, there is african-american participation, comanche express trucking.

Cole: Okay. Well, I'm pleased with the outreach efforts that you have made and I just want to encourage you to continue to do that and do that diligently.

Thank you.

Leffingwell: We have one speaker signed up, carol hadnot. Carol? She signed up against. And you have three minutes.

Good afternoon, good morning, councilmembers. My name is carol hadnot. I'm representing the austin area black contractors association. Well, their idea of good faith effort is, yes, they get the bids, and I know this super experience because I have called this company. They will tell my contractors they are not the lowest bidder, but you've got 45 minutes to submit me another bid. And they will ask, well, what areas in my bid is, you know, too high or what is the problem with it? We can't tell you that. We can't tell you that. That's it. And I have called and they have told me the same thing. So how can anyone go back and redo their bids and try to adjust them to meet whatever criteria, procurement criterias they have to try to be, you know, in the ballpark of trying to do business with them? I looked at these -- i looked at the bids

on here and the third apparent low bidder was able to achieve it, although their price was too high and it was based on the lowest -- not responsive, but the lowest bidder. And if they use the same availability list, why -- the question should have been why could you not have achieved it? And I appreciate smbr deeming it as non-compliant, but there's got to be a problem with the hearing officer, you know. And I know who the hearing officer is, and he always -- never is in favor of african-american businesses. I want to put that on the record that he is never. And we have just got to change this culture the way they do things. There is absolutely no consequences with this company. They have done this historically. Historically they have done this. And so it just needs to be some consequences for it because what happens to those companies who try to abide by the city ordinance -- excuse me, my allergies are acting up. They have said, well, why should we do it? They get away with it and the city allows them to. So I just want to share you with this. They have some procurement, some peculiar procurement practices in soliciting and evaluating subbids, particularly I can attest to for african-american contractors. Thank you very much.

Cole: Thank you, ms. hadnot. I'm sure that my compleegz colleagues that bid on the minority enterprise committee will work with me to try to come up with some additional procedures within the law to make consequences for non-compliant behavior. Thank you, ma'am.

Leffingwell: Thank you. Is there a motion on this item? Mayor pro tem moves approval. I'll second. Further discussion? All in favor say aye had. Any opposed say no. It passes on a vote of seven to zero. Council, we have what i think possibly may be a very short presentation on social media. We've got about 20 minutes. We'll call that item up now, the briefing on social media. I'm doing this, council, because doug matthews has a prior commitment out of town that he needs to leave before noon -- after noon.

Thank you, mayor and council. I've had the opportunity to talk with you briefly, individually about the social media question specific to boards and commissions and wanted to give you an update on where we were. First I want to talk a little bit about the guide be considerations that got us to where we are now. This started as a council action to evaluate social media for boards and commissions and to provide some recommendations and a policy to you all. We've got a couple of considerations that we went through as we looked at the possibility of putting together a policy. First, the open meetings act that the city ordinance requires that all of our city boards adhere to the same state open meetings laws that our sovereign boards do. Vendor participation that anonymity of social media can put anti-lobbying rules at risk potentially. Records retention and social media, we don't always own the content. In fact, if any of you have signed the terms of agreement for facebook, part of that terms of agreement is that facebook actually owns the content that you create. The maintenance that we do -- anything that we -- a venture like this that we pursue, there is a maintenance cost even if it's just in staff time. We're going to talk a little about that further on in the presentation. We talked a little bit about the content ownership and then the first amendment rights. We create an open forum, it really creates a wide latitude for participation and comments. There are three areas of need that they want to utilize social media for. One was content management, presentation of documents related to their proceedings, collaboration tools, creating virtual meetings as opposed to having meetings in person. Then the last was to engage the public to get feedback from constituents. In terms of the first of those, we feel like the tools that we're starting to roll out for the boards and comigs, we have an interim boards and commissions page right now, and when we roll

out the new web agenda management system, we feel like some of those needs are going to be met. We feel like that's the most appropriate way to meet needs that are related directly to the business of that board or commission. Online collaborative tools like share point have open meetings concerns that we felt like were really outside of the scope of developing a policy like this. If the council as a whole decides that they want to go down the road of having virtual meetings, we felt like that was a completely separate issue from the immediate one that we were talking about. So for the purposes of this policy, we focused on the third stated need, which was using social immediate imra to engage the public and get feedback. Rather than go line by line of the policy, I wanted to hit the key items that we felt like would be of primary concern to you. The first is due to the open meetings requirements, individual members of boards would be prohibited from participating in the postings or discussion threads on their particular board pages. This relates to the open meetings act. If we have more than one board member participating in a threaded discussion, then we have a rolling quorum issue. And we felt like the best way to resolve that was to prohibit their active participation and really funnel their participation into participation as a board as opposed to individual members on the board. We wanted to really drive this home. This has been an internal issue as well, which is that social media sites shouldn't be a replacement for information that ought to be on our website. We really wanted to reinforce that as part of the policy. The boards wishing to initiate social media sites should do so by a formal action of the board. What we don't want is an individual board member directing staff to put together a resource that maybe the rest of the board doesn't support. We want clear direction from the boards if we're going to go down this road and that they've made a collective decision to offer this as an opportunity for the public. Committees of boards. There's been some discussion, I know shirley has pointed out on some occasions that at any given time we might have 90 to 150 committees or subcommittees of boards. Our feeling is that those subcommittees ought to be funneled into the primary board for any of their activity. Simply for convenience of the public and for ease of maintenance on our part. You can imagine if we had 100 to 150 of these out there, the maintenance issues. This relates back in to individual board members. We wanted to protect against an individual board member, first of all -- that's actually not included in this piece, but an individual board member to direct staff to post statements. But we also wanted to make sure that the board collectively didn't take that action. We don't want to put staff in a position of posting statements of individual board members. So here's our general recommendations. We want to make sure that if a board does make the decision to start opening up social media channels that they put together a business case first. We have an internal form that we have our folks filling out now that's simple, that's pretty straightforward. This isn't a process of making a judgment of whether or not it's a valid request, but just to make sure that the request tracks with what their stated need is and that they've appropriately thought about how it's going to be governed and who will be responsible for it.

I did want to point this out to the council is we started talking through what the potential is in social media and we're already experiencing it in our department that I've got staff that was brought on maybe for other things, but they're spending an increasing amount of their time managing our social media channels. With 56 permanent boards and 94 current subgroups, and the potential for multiple subgroups at any given time with a limited term, you could be talking about a pretty significant cost when it came to the time involved to maintain these resources. The board liaisons, really across the board, aren't dedicated strictly to supporting a particular board. They've got other job responsibilities. If you calculated that out, even if it was just an hour a week, as you can see here, there is a pretty significant cost and time that's associated

with that and we need to figure out how to effectively manage that. So in summary -- and we mentioned this. We don't want to use social media as a replacement for some of the things that were currently underway with the website, with website redesign and the implementation of the content management system. We don't want to view it as a surrogate for meetings of the board. We talked about the open meetings limitation. And we really felt like this is a tool that's best used to foster public discussion. Any of you that have followed the activity that we launched actually just a couple of days ago on the budget, you can see the value of offering that opportunity for folks to comment, and that's is really what social media is designed to do and that's what it does best. So we'd like to create a simple work flow for requesting and approving media. We want to make sure that the board members collectively make decisions when it comes to content and discussion postings. And we need to be really clear that board members can't participate on their forums. That doesn't restrict them from participating on a forum that's not related to their particular activity. Then we mention this, that staffing and resourcing discussion is probably in order as we continue to go down this road. Obviously today is not the time to do that, but I felt like I would be remiss if we didn't bring that up as part of the fundamental discussion. So what we need to do is to consider the appropriate process for you all, whether that's by council resolution or by ordinance or if you would like us to go back and work on this a little more. We would like to work with a couple of boards that have an active interest to pilot the process before we roll it out really full throttle so that we can make the adjustments that we might need to as necessary. So with that said, I'm curious if you all have any questions or comments.

Leffingwell: I think i heard you say something that caught my interest about virtual meetings. Is that something perhaps that a city council could do is have virtual meetings? I misunderstood, I guess. Okay. Mayor pro tem.

Martinez: Doug, thanks a lot for looking into this. It was something that we had asked you guys to help us with because as you know, and as folks know, social media has become quite prevalent in pretty much everything that we do. Certainly we understand the concerns that are out there and I'm glad to hear the suggestion that you just made that we would select maybe one or two, three commissions and run a pilot program. Because I do think it's going to be very difficult to manage with all of our boards and commissions if they all request to use this tool that's available to us. I would like to see what a pilot program to look like to you all that's manage manageable, that doesn't take a ton of time and resources that we really don't have this year to be allocating. I think it could be an effective tool. I think it could increase public input, but I do understand some of the concerns. So my discussion would be that we try to do some type of pilot program, but that we bring that back to council either via memo, not a presentation, but just let us know what that looks like. Thanks, mayor.

Leffingwell: Councilmember riley.

Riley: I appreciate the presentation. I just have a couple of questions. Number one is about the policy recommendation based on section 8-b, due to open meetings requirements, individuals of members of boards are prohibited from participating in discussions in social media. I just want to make sure i understand the basis of that. Is that -- that's an open meetings concern. Is that open meetings constraint imposed under state law or under city ordinance?

Well, it's both. The sovereign boards are governed under state law. The remainder of the boards, which is really the majority of the boards that we have, are governed by a city ordinance that requires them to also adhere by the state law. That is a city ordinance and it's not required by state law.

Riley: So as to boards that are purely advisory, we could by ordinance enable board members to participate in social media, if we chose to do that. I think that's something that we need to continue to think about and discuss because I think a large part of the value of social media would be to engage the public with our commission and for commissions to actually be able to participate in the discussions would add real value. And of course open meetings has real value too and those are there -- those are competing priorities and we need to think carefully about how they would best be reconciled, but it may be that purely -- as purely advisory boards that the public interest and a full blown exchange through social media might actually outweigh the concern about open meetings. So I think we need to continue to keep an eye on that and work, particularly with the community technology and telecommunications commission. Get their ongoing input in that. And one other question, and that relates to information that could be provided to the public and when we could do that. I've heard some concerns recently about notification of specially called meetings. People, for instance, who have an interest in animal related issues have not -- have had a hard time keeping up with all the meetings of the animal advisory commission and right now there's really no way that they can sign up on any kind of an e-mail list where they will get notification about specially called meetings. Do you see an opportunity either through social media or through some other mechanism to address that concern and provide timely notifications to people who sign up with respect to particular boards and commissions to be notified about the meetings?

Via social media, I don't think necessarily that's a social media question. It's probably more of an operational question. We -- with the new web agenda management system we'll have some of that functionality, but for the boards and commissions we're talking about probably an 18 month window for that to actually get implemented. In the interim, there are some tools that we have. I guess internally what we have to talk about is how far do we want to extend those tools? And then again who responsible for making sure that that notification gets done? I'm sure that the city clerk has some thoughts or some considerations on that as well. I guess my answer is it's not impossible, but operationally we would have to look at some of the tools we already have in house.

Riley: What strikes me is it could be an application for social media, especially if board members were able to participate in discussions. Because, for instance, if you had a facebook page for animal advisory commission and the commission could do a post on that facebook page if there's a specially called meeting, and it wouldn't impose any burden on staff. It would be maintained by the commission, but that would enable everybody who is interested to sign up for that facebook page and then they could get timely notice. I hope we can continue working on things like that. In addition to rss needs and other ways to get information.

Leffingwell: Councilmember morrison.

Morrison: Thank you. Just a follow-up on what councilmember riley was talking about, the concept of basically board members to be able to deliberate online. It's really the pull in different directions of the

ease and the evolution of the way we do business and interact versus transparency and making sure that everybody not only has access to the deliberation, but knows that it's going on and all that. So to me it's a really challenging issue and i think we're not the only ones wrestling with it. I think it will be interesting to keep our eyes open around the country and see how people address this and how the feds, who are very much about open government, deal with it also. I want to tell you that i appreciate the recommendation that basically brings some discipline to this and allows to bring things out because I think that's the right way to go. In terms of virtual meetings, I know that representative strama is planning to move forward with one of those at the capital with one of his in the future. So we can definitely keep an eye on his activities and see how that goes. Although I hear it might require some kind of state statute change. So if he does have one before that, it doesn't really happen, I guess. And then just lastly, i wanted to mention in the piloting of these ideas, it might make sense to think in terms of potentially having sort of a social media master position on the board because it could very well be that some of the citizens that serve on boards wouldn't mind participating in some of the management of the site. Obviously we have a lot of expertise and ability to do that, although the strict responsibilities that we have to adhere to, we would have to make sure there's some way to ensure that. But I just wanted to throw that out for thought as you move forward.

Sure. And of course, the primary concern with that -- and none of this is not doable. The primary concern with that is that a volunteer to an advisory board is not beholden to city policy. And that's one of the things that we want to work with the attorney's office to figure out what is the best way to implement this because it may need to actually be within the governance of the boards and commissions. That's the only way that we can build accountability if that maintenance responsibility is deferred to a volunteer citizen.

Morrison: Well, we do expect our board members to adhere to ethics policies and things like that, so i imagine there could be some way to work that out. Thank you very much for your work.

Leffingwell: Thank you very much, doug. We'll go now to our citizens communication. The first speaker is camille perry. Camille perry will be speaking on noise from outdoor music venues.

I did make a copy for each one of you if you want to pass them down.

Pass them to councilmember cole and she will pass them down.

Thank you for this chance to speak to you about problems of experience of outdoor music venues, which amplify the sound. This opportunity will be used to address general problems rather than refer to any one venue by name. The biggest problem I see is an inherent inability to enforce the noise level. Noise is a low priority call for the police and response time depends upon more pressing situations. The police have enough to do without adding this to their work load. Responders need to be equipped with decibel meters. Many have not been. Even so, when the venue sees the police approaching, they can turn the volume down and as soon as the police leave, up it goes again. It becomes a game of cat and mouse. Neither the police or the und engineer can monitor all the venues across the city at all times. This leads to my concern about enforcement problems continuing. It was my understanding after the public hearing before the music commission that there was already an ordinance limiting the noise to 70 decibels, but there has

been a lot of confusion due to lope whoalz which were added and which need to be removed that allow for 85 speaks bells in some situations. Also adding to the ways a venue can play the system and confuse enforcement is the number of kinds of permits which can currently be obtained and from more than one city office. I have requested of the sound engineer, the permitting office and now you that after sound mitigation is installed, it be tested. Until a venue can operate with zero complaints, first with a one-day permit, a longer permit should not be issued. Even after a longer permit is issued, if a noise problem arises, the police should be able to shut the venue down add the permit be revoked with meaningful consequences. At present my home is within 600 feet of only one of at least four venues from which I am within hearing distance. And reportedly the sounds from one of these can be 6 of a mile away. Therefore I believe the city needs to increase notification distance and allow anyone within hearing distance to become an interested party to a permit request, appeal or revocation. Also, I believe renters as well as property owners, need to be included as interested parties. We've had live music venues in our area for many years. Basically indoor venues, but with some outdoor venues with musicians such as mariachi bands, without amplification, that to my knowledge have not been a problem. I'm not asking for elimination of all venues, only protection from those that are not being good neighbors by disturbing the peace. Thanks again for your time and consideration.

Leffingwell: Thank you. Next speaker is kenneth schneider, topic is northridge acres subdivision, the third world. Welcome back, mr. schneider.

That's what it is, third world. My name is kenneth schneider, northridge acres subdivision. There's a website on -- i put an ad on there, pictures and everything. I get 35 to 40 calls almost every week on it. It's a disgrace we have to live like this, seven, eight miles down the road. I've gone to the water development board -- next thursday I think it's happening. The -- I got on the state website and everything and showing the pictures and everything and they keep e-mailing me. Of course, I haven't learned how to do the e-mails yet. I'm trying to work on the facebook. A guy is setting me up on facebook on this problem. They cannot believe it. It's worse than at the mexico border trying to get water and sewer. We got water and i appreciate that part of it, but it still ain't safe when you have this cesspool like you see here, dead animals around it and everything. And travis county sent the people out there ditch diggers, I guess you might call them, to go out and see what the problem is. They wanted to take soil samples. That will tell you what the problem is. They throw a pile of dirt on top of something like this and pump it into the ground that it ain't going to come out and run down the streets. I can't understand this here. The problem will have to be fixed immediately and I will fight it until I drop because these kids, they're going to mess around and be kids out there swimming in these ponds like this here. And it's actually a sell pool. It's almost as bad as being out in the city dump. This is a cesspool out there waiting for people to die. And all we're asking for is basic services. We can't have stuff like that there. You see water already coming out of there now. That is a mechanic shop. They don't use any water and they can't keep wowrt inside the ground. How do you think homes can do when it you have four or five kids out there pumping the water out. There's no call for it. They're going to build 400 homes right behind us. They will put 400 homes there and they've taken the -- say we don't have the capacity for us? Which I know that ain't true because they have to put it in when they built that over there. I think I saw some salamanders out there in that pond. You probably ought to check on that there. They might be the salamanders out there that are losing their lives because there is a lot of strange things swimming around in there. All we want is basic human services just like anybody

else. We want to find stuff like this lying in the ditches and birds. I couldn't get close enough to get the pictures of the birds. Another thing I want to bring up is I signed up last city council meeting and everything, and they bumped me and everything. I only talked twice. I cannot understand that kind of a rule. I've never been anywhere where they had that kind of a rule. Because the taxpayers pay for y'all to be up here and get three minutes. It ain't like nobody is going to stay here all night long. I don't understand that part of it at all. All I'm trying to get into is human services. You can see the two different colors of the ground out there. You take a test on in here -- I guarantee you would find chloroform and everything else there.

Leffingwell: Thank you. Believe me, we're sympathetic to your problem. Service extension requests are extremely complex. We have an assistant city manager in the back of the garage, who can maybe spend a few minutes with you explaining what that process is.

All we need to do is get the paperwork into the city, the water development board.

Leffingwell: He will talk to you. Next speaker is Dan Miller. Dan Miller. He's not in the chamber. Pamela Monday. Her topic is concern about development on the watershed. Welcome. You have three minutes. Pamela Monday. I moved to Barton Hills from Houston in 1977 and I've watched the battle between the developers and the environmentalists for 33 years. Thanks to the environmentalists, we still don't have a Houston here, but we're fast approaching it. I've seen Laura Dunn's movie, the unforeseen, and I've experienced personally looking in Barton Springs in 1995 that shot from the movie that shows them swimming in real clear water and then in 2005 swimming in what looks like milk. A city employee from the watershed protection department told me that we're at a tipping point. He said Pam, we're one development away from destroying Barton Springs. This is the jewel of our city and -- the jewel of our city and you are stewards of this jewel. The city is being challenged over rights to the Western Oaks development center. The site for this project grants the developer permission to build at 45% as you limits over the recharge zone building at 15%. I'm here to protest an even more egregious assault on watershed, a 65% impervious cover project that was allowed because of ordinance 2008-060443 passed by the council. This ordinance allows the developer to ignore laws that protect the watershed and build a dense apartment complex on watershed land next to Brodie Wild. That's the corner of Brodie Lane and Slaughter. You all have gotten e-mails about that. Brodie Wild is a city owned water quality protection land. At some point the city felt water quality was worth protecting. In February of this year a city employee report that had dye poured into sink holes on Brodie Wild took 30 hours to reach Barton Springs. That's how quickly runoff and pollution reach the jewel of our city. Prior to passing all discussion of this ordinance was held in secret and without notice, given to affected citizens. It included a zoning change and five pages of variances to the environmental protection laws. Cleared sessions favoring private interests are in gross violation of the public trust. The council often uses grandfathering rights to developers. This is a pattern that's wrecking the watershed. Vested rights are not supposed to override public good. They're only supposed to be upheld if, quote, a developer can go ahead with the project without substantial loss or hardship to the public. Both Broadz Wild and o.o. Brodie Wild and Western Oaks pose a large loss to the public. You have a duty as councilmembers to protect the watershed and water quality so the city continues to be the crown jewel of Texas. I'm inviting you to take a stand against the will of the violation of the people and to uphold the s.o.s. Laws that protect the watershed. Have the courage to rescind that

ordinance that allows a developer to permanently pollute our aquifer. Thanks for your attention. Not in the chamber. Frank harren. His topic is transportation in the context of comprehensive planning.

Good to see you. I'm here to talk about transportation and comprehensive planning. Since I've spoken here on a couple of occasions in a representative capacity, i just want to make clear that today I'm just frank. I'm not speaking for anybody else. I know some of you have seen me wandering the halls with certain former mayors and other questionable characters, and I'm not speaking on their behalf. We're at a very critical point in the comprehensive planning process. morrison was over at palmer the other day. For the first time on tuesday the citizens taskforce got a layout of the four alternative growth scenarios for austin. spillar gave a presentation on transportation. The bottom line was that evening that there was serious push back from the taskforce on those four scenarios and I have distributed to all of you the vancouver plan that i came across monday and distributed to the taskforce on tuesday. One of the members who got a copy read through it and said I'm ready to sign out offon it as the austin plan. And he had just come back from vancouver and had arrived at the meeting on a bicycle. What I'm asking is that you direct your staff, garner and his folks and create a fifth map, so that it can be run through the same software that we already owned, and we can determine what the carbon footprint would be under the vancouver version of the alternative growth scenarios. Austin is actually mentioned in the vancouver plan, but it's mentioned in a bad context. It is a list of 10 cities and their carbon footprints. Vancouver has chosen the route of much higher density and they have a carbon footprint per person of five tons per year. Ours is 16.7. I think it would require nothing more than a two minute conversation with your staff to simply say, put the vancouver densities on to the austin map, the central 44 square miles of vancouver encompasses, and you can even instruct them to stay completely off the aquifer. And just run it through the software and see what comes out in terms of sustainability. I think if you read through those documents just briefly, you will be very impressed. It sounds like it came out of austin. There's no downside. You don't have to make any policy decisions, any changes in the process, in the comprehensive plan. I would ask you to please do that and we'll see what happens. Secondly, I know we've got transportation bond issue may be coming up. spillar said that we essentially have funding for about three percent of the projects that are at this stage very critical. I will get you the rest in writing. Thank you for your attention.

Leffingwell: Thank you. Jeff lewis. The topic is building project that has been held up by the city of austin at 2206 east 14th street.

Thank you, council. I have some -- a document i would like to hand out if you could pass it down.

Leffingwell: Give it to riley and he will pass it down.

Thank you for your time, council. I've been working with the city of austin for a year and a half in order to get this project completed. We have over 350 e-mails that have been sent back and forth. The project was obtained -- the project obtained its certificate of occupancy by the city of austin, was built for the permit plan specification. The inspector, however, did not update the permit system with final approval on the garage; however, the inspector instructed the permit staff to issue a certificate of occupancy. If the garage did not pass inspection, then the parking requirement would not be met, then it would not be

possible to have issued a certificate of occupancy for the project without meeting these parking permits. Either this was issued in error by the city, and if so the city should be responsible for all damages as the result of negligence, or the city should accept this with an error of their inspector and drop the issue. The grade matches approve the site plans, approved through the topography. The proposed variances only the scope that we're trying to get approved. All existing site conditions have been approved by the city of austin. I have tenants that are occupying from the date of the certificate of occupancy. Access to the garage units did not require a permit because it was not facing a detached street. No deficiencies have been noted by the inspectors upon inspection with regard to access. The biggest challenge that I've met with the city has been that there was a set of plans that were issued, red stamped. We have the red stamped plans that were also issued. A second set of plans, but the computer system was not updated. We were issued stop work orders, issued red tag citations. The judge issued a decision of not guilty on all those citations. We discovered after eight months of meetings with the city of austin that the plans that I was receiving permits for were not the correct plans. I repeat that, the plans that were in the city's computer were not the plans that we were permitted, red stamped and I have available for view today. And we're requesting that this gets pushed through. Now the city is asking us to come back and repave or pave an entire alleyway to gain access to this -- to the garage units that were already permitted with all the designs and architectural permits in place, and now we're -- i feel like we've been drug out by the city for a long time. This has been over a year and a half at this point that this project has been delayed. I would appreciate any assistance that I could receive from you guys. Thank you.

Leffingwell: Thank you. Next speaker is jeff lewis -- excuse me. Alex san martin. Alex san martin? Not here. Mity myhr clay. Topic is building permit issued in error on my street, 4605 avenue b that is in clear violation of our neighborhood plan. mayor and members of city council. My name is mity clay and i live at 4528 avenue b. In hyde park. My neighbors and I are here today to protest the granting of a building permit for a duplex to be constructed at 4505 avenue b. The duplex violates the north hyde park nccd for parking, driveways and carports. You must be asking yourselves right now, why is she here? And not at some other city office? And the short answer is that we have filed two appeals against this permit. We have e-mailed with city staff. And I only learned before coming in today that they have issued a stop work order. However, we shouldn't have had to spend three weeks going around and around to get to this point. We asked the council to ask the city permitting office to rescind the building permit and ask the builder to redesign so that it meets the letter and the spirit of the north hyde park nccd. I'm going to give you just a little bit of background on this project and then I have another neighbor who will be coming in and talking about the zoning issues in particular. In the year 2000 in response to the austin comprehensive tomorrow plan, hyde park issued a plan. The goals of this plan are clear and if you look in your packet they are in the inside -- inside of the first page. The first goal is to preserve and enhance the traditional character of our neighborhood. And to that end one of our first priorities is to prevent duplexes from being constructed that result in dormitorylike structures with numerous cars. Do not allow front yard parking. That is the intent of our nccd. Therefore starting in late 2002 and 2003 and for several years after, many of us -- and I have the neighbors here who worked on the nccd with me -- spent many hours surveying our neighborhood and many, many more hours meeting with neighbors and other interested parties and many, many more hours working with the city staff and with the city's legal department to ensure that the zoning was clearly written and enforceable. It was later ratified by the city council and signed by the mayor. The poster that I have before you is my street, avenue b, and I think it demonstrates

for you what we learned generally about our neighborhood. And that is, that these are single-family homes and all of them except for one have driveways on the side of the houses and parking in back. And the one violator was constructed before the nccd and neighbors were not happy about it, but he did it anyway. There are also many duplexes on our street, and all of the duplexes, except for two -- if you will put the other poster up, I will show you those two -- have parking on their side and -- driveways on the side and parking in back. On the right corner there are the violators, and that is why we published and nccd. that is why we asked you to ask the builder to redesign. Thank you.

Leffingwell: Thank you. Is mity correct?

Yes.

Leffingwell: How do you feel about the plan to do the formula one race in hyde park, up and down the avenue there?

I think we would protest.

Lfingwell: L right. Next speaker is robert james. He is advertised speaking on the same topic.

Hello. Mayor and city councilmembers, thank you for being here and allowing me a few moments. I'm robert james and I've lived at 4601 avenue b for over 25 years and currently do so with my two preteen children. We love our home, street and neighborhood. I'm an architect and builder and have been active in the austin development community for over 25 years. And this is the -- this is only the second time that I've spoken at city council. The reason for this unique visit today is regarding a building permit that has been issued in error for a duplex, a rental duplex at 4601 avenue b, one horse north of me, that does not comply with our nccd. You will have to excuse me. This is my normal -- this isn't my normal duty. I am pleased to see somebody finally start construction on this lot, but was horrified when I saw the site plan and what was proposed. As an architect familiar with the city zoning, the McMANSION ORDINANCES AND The north hyde park nccd, i was astounded that this could have been legitimately permitted. I then spent hours calling city staff and writing e-mails asking various questions. To this date I've only received one written response from john mcdonald answering a generic question regarding McMansions. I've had various consultationing with staff members, but my specific question regarding this project have not been answered. After an appeals sent in by my name mity, who just spoke, requesting a stop work order, was not successful, I signed up to speak to you. I was hoping this situation could have been revolved before this meeting. It has not. I'm here to request your assistance in correcting this permitting error and save my street from this project that violates my street in various ways and could have a permanent negative effect. It does not -- it does not comply with, one, single-family character as required by the land development code. Two, city design standards recommending all parking in the rear. Three, the hyde park neighborhood plan prohibiting dormitory stiel complexes. And most porply, it does not comply with the intent or the wording of the north hyde park nccd. I therefore request -- I'm not quite sure what exactly we're requesting. I would like a stop work around and the permit rescinded and the developer to go back and redesign the project to comply with all the nccd requirements. I personally designed two duplexes on the street, in addition to a single-family house as a rental use unit and one other single-family house.

They can all be designed to be compliant with our neighborhood and with the nccd. Thank you for your time.

Leffingwell: Thank you. City manager, do we have a staff person from neighborhood planning or assistant manager who could perhaps address this issue? Greg? Would you -- no, I don't want to talk to you. I was going to ask you to talk to these folks and address that question.

Actually, mayor, I would like to ask greg a question.

Leffingwell: Mayor pro tem.

Martinez: We have two different citizens communication items on what appears to be very similar issues, the east 14th street property, when I pull it up on google earth, it is a duplex. It's not a single-family home. And it does look like there's significant impervious cover issues. And then we have this case here. So what can you tell us about both of those cases?

The 2206 east 14th street, it was a building that was permitted. There's actually two structures on the lot. I don't think there's an issue with the building in front. There's an issue I think with the building in the rear. And I know code compliance is active with regards on the building in the year as well as my staff. And the concern principally is the building to the rear -- (mic feedback) the building to the rear of the one on 14th street is that when there was an adequate parking, it's alleged that there's a garage door that may not necessarily be parking available on the property for that particular property and may not have been cructed according to plan. So I'm going to go look into that one in particular, but based on the information i have, yes, there is a co in the front portion of the property, which is one building. There's not a co in the back.

Martinez: Do we typically sue co's by individual structures or addresses?

We do. We issue a certificate of occupancy for each of the buildings separately. That's correct. Now, on the other project, 4605, that is a duplex on avenue b. The permits were issued, construction I don't believe has begun as far as actual going up. The owner has come in several times. Karen mcgraw, who is on our residential design compatibility committee, gave me a call with a concern about not so much the nccd issue, but she did speak quite at length to that, but also the McMANSION ISSUE. And after reading the issue -- reading her concerns that were expressed IN the McMansion regulations, going back and looking at council minutes and the various actions that were taken in 2008, i basically instructed the owner through my staff that we were going to issue a stop work order to the owner unless they amended the plans to remove a carport structure. At the time when the McMANSION REGULATIONS WERE Amended in 2008, they were allowed one 200 square foot carport covered area for parking and then you could have one other detached to t of the property, a 450-foot structure. That has been remedied. But there was an appeal filed by mity before the building and fire code of appeals and also before the board of adjustment and there's a question of standing. After conversing with our law department, that that standing issue could not be debated by staff. It's appropriate to go before the building and fire code board of appeals and before the board of adjustment to determine standing. Not unlike items that get brought

before the city council, sometimes you're asked does this person have standing, is there a question regarding standing? And so those two issues must both be brought before those boards. Because of that issue there's a provision in our code that says if there is an appeal, we must issue a stop work order. So my staff has constructed the owner today that there will be a stop work order on the property pending the resolving of these issues of standing before these two boards. So that's where we are today. I've actually had a James about some of his issues that he related to you today. I've not gotten back to him because he's asking for very precise portions of the NCCD, and I think there is a matter of interpretation based on what he has said. So I'm looking at those right now. But that's secondary to the reason why we issued a stop work order.

Martinez: Thank you.

Leffingwell: Those are all the citizens we have signed up to speak in citizen communication. So without objection, the city council will now go into closed session pursuant 071 of the government code for consultation with legal counsel to take up two items. Item 47, concerning the attorney-client privilege and communications made during a closed session of the city council authorized under the open meetings act. Item 48, concerning the city's minority-owned and women-owned business enterprise procurement program. Is there any objection into going into executive session on the items announced? Hearing none, the council will now go into executive session.

good afternoon. We are out of closed session. In closed session we took up and discussed legal issues related to items 47 and 48. No action was taken. We will now go to -- without objection, council, go to item 49, a time-sensitive matter. On this afternoon so we'll take up item 49. Welcome, Mr. Newman.

Thank you, Mayor and Council. I'm a financial management, service financial advisory to the city. I'll hand out booklets while my partner Dennis Whaley here begins a discussion about the transaction at hand item 49 and then I'll finish up with the details of the transaction.

Thank you, Dennis Whaley with PFM. Page 2. We sold two series of bonds on a basis. Bonds with Fulbright & Jaworski, underwriting groups. Maddies, a 1, Fitch 55 minus. Austin Energy has very strong investment ratings. That's reflected both in the institutional investor interest in the bond sale as well as the retail interest, we did a retail order period Tuesday, and sold about \$40 million worth of bonds. Many maturities were overdescribed, meaning there were more bonds sold than there was availability, allowing yields to be lower and saving the city money. It's important that the city continues to maintain its strong bond rating. This is done through strong coverage, maintaining strong fund balances and other requirements of the rating. This will increase investor demand and lower your borrowing costs. The first series of bonds was \$119 million worth of tax-exempt bonds used to refund \$50 million worth of commercial paper as well as a bond refunding and the second transaction was taxable build America bonds a little over 100 million, and that money was used to refund \$1 million of commercial -- \$100 million of commercial paper. I'll turn it over to Bill to finish up the presentation.

Thank you, Dennis. Page 5, Mayor and Council, there's a little discussion there of the condition the market was in the day we went to market. You'll notice that prices have eased just a little bit on Wednesday. That

means it yields -- yields have been up slightly. The nice for us is we were selling long bonds and the yield curve on the short end went up more and the 30 end didn't go up at all. So we were fortunate there. Notice in the middle of this paragraph, this update, it says one of the hottest topics among municipal bond investors is the difficulties cities and towns are having balancing their books. So obviously cities and munls and their -- municipalities. Largest competitor in the bond marked. On page 6 you see where since about april of this year yields have started to come down. The 30-year yields is up. If you look at page 7 our transaction in itself, the top part of that page is the tax-exempt bonds, the bottom part is the babs or build america bonds. Together when you lend a yield for these two transactions you got an outstanding tax-exempt 99%, which is most commendable. The next page for the refunding savings so that we did refund a series 1993 issue as well as a series 2001 issue, total of about \$74 million, and the city saved as a result of that transaction some 3 1/2 million. Lastly on page 9 we felt it important to give you the been of the savings of build america bonds, the bab bonds. If you look at the lower right-hand corner on this page you'll see that the gross savings over the life of this transaction is a little over \$25 million, the net present value savings was about \$14 million. That said we'd certainly recommend approval of the transaction and be available for any questions you may have. Questi questi ons, council? Outstanding work.

Thank you, sir. motion 49 by the mayor pro tem. I'll second. Any further discussion? All in favor say aye.

Aye.

Mayor leffingwell: aye. Opposed say no? Passes on a vote of 5-0 with council member morrison and council member spelman over the dais. Thank you.

Thanks again. Congratulations on a good transaction and I've been remiss in not mentioning all the staff members that work on this transaction and worked very hard and we certainly appreciate their help. Congra congra congra congra help. Congra congra tulations to all on this. So without objection, now, council will go to item no. 70, Which should be a short item pulled off the consent agenda by council member cole, and we do have two folks signed up to speak. Council member cole? if you'd like we can go ahead and well, I don't see them. Gavino fernandez? Is gavino in the room? Not in the room. Paul hernandez. Paul hernandez in the chamber? So he's not in the room either, so council member, go ahead.

I would like to -- thank you, mayor, I would like to ask assistant city manager bert lumbreras -- is he here? let's see if he's -- can we check to see if he's in the back? All right. mayor, do you want to take another item or do you want to wait? let's pause. We'll find out.

Good afternoon. I'm stephanie hayden, health and siewm services. Service human services.

Cole: hi. I want you to explain to our colleagues the city of austin's role in this project, the promised neighborhood project. I know myself and council member morrison actually sit on the advisory committee, and I think it's very important to point out this is where we are truly cooperating with other governmental entities, especially the school district, because we do that so seldom.

Okay. The city of austin's role is really critical because the promised neighborhood grant calls for collaboration with governmental entities, school districts, nonprofits, and the city has taken a very active role being on the advisory as council member cole has stated, and morrison has been very active as well. In addition to that, assistant city manager bers lumbreras went with them to new york to see the harlem children's zone, because brent is a part of the harlem children's zone, the initiative from the president's office. So it's critical that as we are moving to be partners, on part of the joint subcommittee, which has the city, the council, aisd, it's critical that we are present in showing that we support this effort. let me just ask -- cooperate with the school district. But I think it's important to lay this groundwork in terms of.

pearce middle school which feeds into reagan high school, and we all know those schools are low performing schools, and so they fit very well into the description that the government is looking for, and they're wanting to see areas that have this type of criteria with schools, so that would make the application very strong.

Cole: okay. Thank you, sharon. We appreciate that. And so we'll just make a memo to mayor leffingwell to call president obama up and say, send the money next time he's in washington.

That sounds great to me. thank you. I'm on the way. Council member morrison? just to follow up on council member cole i just wanted to remind folks that the actual group as we've named ourselves, this directive group is the austin achievement zone. There's actually an employee that's going to be moving -- really helping to move by the name of carol dlainy smith, a soon to be previous school board member so we're really fortunate about that and the grant will be going in this month, I believe, so it's been not only -- is it great between the elected officials but staff, between the counties, the city and the school districts as well as all the amazing nonprofits that are part of this have just done amazing jobs and come and report to the joint subcommittees, so it's really a very exciting opportunity for all of us.

Thank you. council member riley.

Riley: get clarification. I know there was discussion about a couple different. Is this just support for pursuing --

actually, this is just really pursuing the port for the project that -- council member morrison? there has been a deliberative process for these joint efforts right now of the city, the county, the school district that we're finding this in our local deliberative process to take the criteria of the -- of the grants that are being requested, and that actually have a specific demographic goal that they're looking for, and early on the group did a lot of data analysis to zero in to find that the john's neighborhood was the one in our city that that area. I asked because i know some folks that have been working application for their areas. I want to make sure that nothing about this action progress on an application from -- on the part of folks involved

morrison: absolutely not.

Riley: okay. Thanks. motion, council?

Cole: move approval. council member cole moves to approve the items, second by council member morrison. Discussion? All in favor --

-- I will not be voting. I'll be recusing myself.

Right, we announced that earlier this morning but it was not on the consent agenda. So thank you for reminding us. All in favor say aye.

Aye.

Mayor leffingwell: aye. Opposed say no? So the vote is 6-0 with council member spelman recused. Thank you.

Thank you. so without objection, council, I think it makes sense to go to item 23 before we take up item 13, so that item was pulled off for a number of speakers who have signed up and if you have any preliminary questions we'll go to our speakers. Council member spelman? very quick preliminary question. This is actually a question for the city attorney. The posting language for this item says to approve award negotiation of the contract with -- and then of respondents to the rfp, the posting language only lists one of those respondents, allied waste services.

Correct. I want to be sure I understand what parameters there are on the action the council can take because of this posting language and the discussion the council can have.

Okay. I was looking for ann morgan or carey grace, so basically we're kind of limited to the scope of that. I think we could -- we could go into executive session and give you some legal advice about what your options are under that posting. do we need to go into executive session for that?

We would if you would like to, but carey, can you --

hello, everyone. Carey grace, city of austin law department. We can certainly go into executive session on any legal questions that are -- fit the parameters of the posting on today's agenda. let me ask you a specific question then. Do you not feel comfortable asking it in open session, I'll understand.

Okay. we are pted for award negotiation for allied waste services. Suppose I wanted to enter into other discussion on the question of award negotiation with one of the other three top finishers, they got the most -- largest number of points in the rfp analysis by the staff. Now, as I understand it, we have the legal authority absent this posting language, forgetting about the language, we have the legal authority to enter into negotiation with any of the top three finishers. Is that correct?

We have the legal authority to do several things. We certainly have the legal authority to to end the process or begin a different process or a slightly different process. That question -- that piece of your question also is problematic for purposes of today's mee because of the posting language, and part of

your question is also less a legal question and it's a purchasing question, and I don't know if byron is here. i think the city attorney -- i think the city attorney wants to weigh in here.

Yes, please.

Go into executive session and talk about the legal options that --

for today.

-- That you have under this particular posting the way it's posted may be more helpful before we start getting on the record with maybe what the landlord -- legal options are, and I think the posting is what are the legal options

spelman: okay. council member shade? as I understood it, if I wanted to make a motion to reject all of the -- all the current respondents -- reject all of the proposals and cancel this rfp process, would I be allowed to make that motion?

Yes, council member, that's one of the acceptable options today, it is, under the way the subject matter is posted on the -- for purposes of notice to the public you may do that. I'd like to make that motion. mayor pro tem?

Let me follow up real quick. So if that motion were made, then going to item 13 specifically, that would just be withdrawn, it would be a moot point? So it would just be withdrawn so --

we would not move forward with doing anything on item 13, and that -- point of order. There's a motion on the table by council member shade. I think we need to have a second before we have any --

second. second by the mayor pro tem. Go ahead, city attorney.

We would not move forward with that, mayor pro tem, and that would not be a problem.

Mayor leffingwell: okay. So motion and a second on the table to -- restate your motion, please, council member. the motion is to reject all proposals, cancel the rfp process and withdraw item no. 13.

Spelman: mayor? and we do have a number of speakers signed up. Council member spelman. I believe I'd like -- I know I would like to discuss this motion, but I'm not sure whether the discussion I have in mind is legally permissible under this posting, so although i usually prefer to handle these things in open session where everybody can see what we're talking about, it seems to me that the city attorney's staff would prefer us to discuss this in closed session, at least for a few moments, so I'd move that we go into executive session to discuss the posting language issues first, until we hear the speakers -- we take up the motion. so we have a motion on the table. Is this a substitute motion -- I think this is a motion which takes precedence over that motion. We can have two motions on the table. is there -- is there a second for that motion? Second by council member shade. So all in favor of that motion say aye.

Aye.

Mayor leffingwell: aye. Any opposed say no. All right. So we will go into executive session, but before we do i would like to suggest, council, that we table this executive session and go ahead and take up our briefing that was scheduled for 10:30 that is remaining. Is there any objection to that? All right. 30 briefing. I forgot what it was.

Waller creek. walker creek. Okay.

Good afternoon, mayor and council. The briefing does concern the waller creek district master plan. I'm jim robertson of the and oh planning and development review department and I'm the project manager for the waller creek district master plan. We are posted for public hearing and potential council action on this june 24, so this will be presumably the final briefing and the final time we present to you this master plan. That being the case, I think it's only appropriate that i acknowledge sort of our gratitude among the planning team for the extraordinary work that other city departments have provided in support of us on this project, and that includes the parks department, the neighborhood housing and community development department, the transportation department, public works, and so forth, and I especially want to call out a thanks to the watershed protection department and their extraordinary environmental resources management team which has been -- they have provided just superlative work for us in crafting our product. I want to start by sort of answering the logical question, why -- why are we doing this project? As you-all know the city and its funding partner, travis county, have committed to spend in excess of 100 to \$125 million or in that vicinity on a flood protection tunnel, and that is -- that is an extraordinary effort, but the fact is that that effort will have very little impact and very little effec on -- on the above-ground state of waller creek. But if we accompany that commitment and that effort with policies and ground-level improvement, then we can truly leverage that investment and produce a project that will have a transformative effect on a major portion of our downtown and hopefully and even beyond that. Let me remind you briefly of the process we have undertaken here, essentially a three-step process. We began this in the late spring of 2009. One of the first steps was a series of stakeholder meetings, and then that culminate indeed a town hall meeting, and that is the process by which we helped draw out of the community a vision for waller creek. The second step was a draft master plan, and we presented that at a second town hall meeting and held a series of additional stakeholder meetings at that time, and we came to you in I believe it was september of 2009 and presented you with that draft master plan. We're now at the third stage, third and final stage of this project, and we are bringing to you our proposed final master plan. It has -- bringing this to you has been accompanied by a town hall meeting that we held in april, and we have also presented this project to a host of boards and commissions. Throughout this process we have had the constant and very helpful council of the waller creek citizen advisory committee, a committee that you, council, created, to serve as an advisory committee and sounding board for the control tunnel project as well as the project I'm here to talk about, the waller creek district master plan. Going back to the board and commission presentations, as I said, we presented to a host of boards and commissions, and I want to emphasize the fact that every single one of those boards and commissions that took action included in their action a recommendation that this master plan be adopted. I guess I point that out because sometimes I and other members of my department bring to you project that maybe aren't quite accompanied by the wave of goodwill that this project is accompanied by. So with that I am

going to, as a brief introduction -- I'm going to turn over the briefing, which will present you a summary of the master plan, to jim adams, who is representing our consultant team, and jim was one of the leads in this project.

Thank you, members of council. We believe that the improvement of waller creek, both the flood improvement project and the recommendations of this master plan, will be viewed by future generations as one of the most transformative and significant acts that have shaped the city and its quality of life, paralleled with the damming of the colorado and the beautification of lady bird lake, and the creation of the premiere open space that that is. In fact, we think that the waller creek project is really an extension of the vision that lady bird johnson and so many others had for town lake, an improvement that is going to introduce nature back into the fabric of city life and help to remove barriers and bring the community back together. The master plan has three a creek improvement project, the district development standards and the implementation program. The creek project itself deals with the stream bank, restoration, the trails, the open spaces along the length of the corridor from lady bird lake to waterloo park and the university. The district development standards talk about the form and treatment of private and public development that will occur along the creek within the district and how that development relates to the creek, and the implementation program talks about the actions and the priorities that will be required to chief the community's vision for this corridor and how that might be funded and implemented. There were three guiding principles that really are the foundation for the waller creek plan, and these are principles that we have tried to balance in the -- in the formation of the environmental restoration, connectivity and investment. The first principle, environmental restoration, even though the -- we are dealing with a flood control project that will channel floodwaters of the creek below to a tunnel, there is a very attract option or opportunity of enhancing the ecological hydrological and of the open space corridor and one of the things that the community told us is that they want to see the natural and ecological aspects of the creek restored as part of this project. Extending the landscape of lady bird lake inland and through the eastern parts of the downtown, restoring the native riparian ecosystem of waller creek and dealing with the serious issues of erosion that are occurring along the corridor, and creating pathways that do not interfere with the natural landscape that are really complementary to them, and so we created a system that will try to do that. The second principle of connectivity is one that talks not only about the linkages north-south from lady bird lake to waterloo park and the university, but also connections cross east-west, the idea of connecting east austin with the downtown, the rainy street district with the area as well. So the system of connectivity deals not only with the trail system, which will be within the creek and adjacent to it, but also with street scape, bike improvements that will improve access and mobility to and along the creek. The green line on this map here shows the pedestrian trail system that will create an accessible path of travel from lady bird lake trail to waterloo park. That trail will occur both within the creek channel south of palm park, between 3rd and 7th street will fall the main street and then re-enter the creek scape north of 7th street to waterloo park. The plan also calls for significant bike improvements creating a premiere bike route along red river street in the orange, so along 11th street, to complement the lance armstrong bikeway that already occurs along 4th street, so creating a web of connections both north-south and east-west. In addition to the trail, the bike and pedestrian trails, we're also talking about several roadway linkages that will improve connectivity, the extension of sabine street in the yellow south from 4th street to 3rd street in palm park, and the extension of rainy street north of cesar chavez, or north of david street to -- across cesar chavez to 2nd street, which would also be extended between the i-35 freeway and red

river street. Improving local access to and around palm park and in the southern part of the area. One of the things that has been a real challenge in waller creek is coming up with a movement system of trails and bikeways that do not overwhelm the creek. If you look at the photograph on the upper left, we -- there have been in the past improvements made that have really overwhelmed the scale of the creek, and so what we've tried to do is to come up with improvement that allow the creek be restored to some of its natural characteristics, and to that end sabine street is seen between 3rd and 7th street as a major new promenade within the downtown, one that will be lined with cafes and restaurants that will both overlook sabine street as well as overlook the creek itself and provide for a bicycle and pedestrian linkages through this downtown area and help to revitalize a part of the downtown that has seen some deterioration over the past decade. The third principle, activities investment, as you-all know, this is a tax increment financing district. It is critical that we promote redevelopment and reinvestment in this area in order to fund the tunnel improvement project but also to revitalize this part of downtown and to bring it some new life. We have estimated that there is a capacity within this area under existing 7 and 11 million square feet of new development within the area on sites that are susceptible to change. This creates some very exciting opportunities for a complete range of land uses, from residential to convention center hotels to office and retail uses. Also, a real diverse scale of uses is possible here. We have significant capital view corridors that traverse the area, which could be viewed as a constraint but is also an opportunity to create housing of a different scale than what you see in other parts of the downtown, and also opportunities for affordable construction that could provide more affordable housing and family-oriented housing within the downtown area. The development standards that are part of this master plan have really focused on the regulations that are needed to ensure that development orients to the creek as opposed to backing on to the creek. Historically in downtown austin because the creeks have not been perceived as positive features, development has tended to turn their back on the creek. What we're trying to do with the development standards is to reorient those development projects, new development projects and existing ones, to the creek, so that they help to energize the life of the creek and to support the investment that the public sector would be making in that creek corridor. And so the development standards deal with this list of issues, how development relates to the creek and streets, setbacks, step backs, the type of creek scape improvements, the types of uses that are occurring along the edge of the streets and creeks, how parking is dealt with, how buildings are and so on. And finally the implementation program. This is an ambitious project. It is identified -- it has identified three critical projects to achieve the trail connectivity from lady bird lake to waterloo park, and six related projects that will help to realize the overall vision. The three projects that deal with the connectivity, projects 1, 2, 3, are shown in orange, blue and red. The most critical of these projects, we feel, is project 1, which is south of -- generally south of 5th street and deals with overcoming the discontinuity in the trail system that already exists, restoring the creek banks, dealing with the serious problems of erosion that are occurring there today, and really setting and creating the trail and the open space improvements and setting the stage for redevelopment. This is the portion of the district and of the downtown that has a significant potential for new redevelopment opportunities. So we see this as a real centerpiece for that renaissance, at a cost of approximately \$21 million. The two other projects in blue and red, the sabine street improvement project in blue and the project north of 6th and 7th streets in red really would allow for the completion of the trail, but there is some trail connectivity along those segments today, so again the first phase would be the most important. Other projects of importance, tom park, waterloo park improvements, street

improvements, all very important in realizing the overall vision for the waller creek district as well. And with that I'm going to turn it back to jim, who's going to talk about the next steps of the process.

In terms of next steps, one thing I wanted to make you aware of is that we will be providing a briefing to the travis county commissioners court, our finance partner for the tunnel project, next week on june 15. We also provided them with a briefing at the midway point, the draft master plan stage as well. As I mentioned when I first came up, we are scheduled for a public hearing and possible city council action on june 24, and of course one of the requests for that possible action would be that the city council adopt the waller creek master plan. We will also -- we have other potential next steps that -- of course which are subject to council approval and direction. Those fall into three broad areas. The first area would be to develop a finance plan for the project, and of course that will include part of one increment of it, the ability to -- the financing that would provide the ability to move forward with the logical -- one of the logical next steps, which is design and engineering of the physical improvements that are identified in this master plan. The secondary of potential next steps would be to begin the work on crafting, taking through the public process for approval, the code amendments that would put in place the development standards that jim adams just spoke about. And then the third component of potential next steps are steps that really could begin as soon as -- as soon as the council directs. They do not have to -- unlike some of the physical improvements where there's a logical sense of -- or logical and perhaps necessary need to wait until the tunnel becomes functional because physical improvements put in the creek corridor prior to when the tunnel, the flood control project becomes operational would be at risk just as they are today. But there are next steps, and we've heard fairly loudly and explicitly from our stakeholders that these next steps are important to our community, and they include basically developing a plan for increased programming along the creek, to begin to turn the tide of the -- what the largely currently negative image of waller creek. To continue the image that's already begun but begun in sort of less of an ongoing nature, to improve maintenance and policing along the corridor. And then the third thing is to continue the efforts that are already going on to improve the quality of storm water that enters the creek so that the creek already can begin to operate in a more natural condition with less intrusions from man-made elements. So with that I will -- that concludes our briefing, and we are available for questions.

Cole: mayor? Questi questi on? Council member cole. first of all, i want to thank the professional staff in practically every department that has worked on this city, for heading up the efforts and joe and leslie bratter and just on and on and of course I want to thank the team, but little fact that may go unknown is that we have a waller creek advisory committee that consists of 17 members that come from various organizations that endorsed the project well before we ever got started. But the person who used to be chair of that committee happens to sit next to me, bill spelman, and I want to thank bill spelman for his early involvement and time on this project, and I also want to recognize council member riley and council member shade for their continued efforts on it. With that being said, I'll just thank you. Jim, do you mind simply listing the number of board and commissions that this project has been through, for council member morrison.

let me see if I have that list with me because i can't -- I may not have it committed to memory. that might be a bad strategy, council member. You might have missed one.

Cole: yeah, that's true. Well, never mind.

Yeah, let me start and I'll have one of my colleagues tell me where I've left off. The waterfront planning advisory board, the environmental commission, the urban transportation commission, the parks board, the design commission, the downtown commission, of course the planning commission and various subcommittees of a number of those entities, music commission, yes, most recently.

Really?

Music commission.

Don't want us lining up anything for the 24th. Jim, we have also done some preliminary discussions with some people about the need for a public/private partnership, and council member shade and council member riley and I have been working on this, and that has not really yet gelled but we're still trying to bring that forward, but i wanted to go ahead and put that in front of my council members that we hope to be able to bring that forward at least within the next year, and the idea is to find some private participants to help us with the process of raising the funds for some of the surface improvements. And other than the fact that you guys so far have kept us on time and on budget, and i have to thank the city manager for all his hard work on all that and actually walking the creek with me and some other staff members shortly after coming to austin and continuing to be so supportive. And finally, I don't want to forget mayor pro tem betty dunkerley and former mayor will wynn for all their support, and that being said, I want to say, good job. thank you. Further comments? Mayor pro tem? one is that i wanted to request we get this email to us. Powerpoints are hard to see all the different color coding and labeling that's on here. There's a couple questions that come to mind. When I look at the plan and it talks about bike lanes on red river street, what are -- what have we done in terms of having conversations about the entertainment component of that street, how it would impact things like parking for those music venues, and then moving forward, as redevelopment occurs, you know, quite frankly the expulsion of live music venues that are in rental spaces right now. Have those things been contemplated and if so, what are some of those conversations that are being had?

With regard to your first question or comment there, we'd be happy to get you an electronic version of the powerpoint. I will point out that i think every graphic that is contained within the powerpoint is included within the master plan itself, which I believe each of your offices have, so i wanted to point that out as a resource for your continued enjoyment. But if you can't locate it within your office, let us know, we'll get that to you and we'll also get you an electronic version of the powerpoint. Turning to red river, i heard sort of two aspects to your question, one being the bike boulevard. The bike boulevard already has been included in the -- in the city's -- or not bike boulevard. Let me back up. Let's not go there. bike lane -- lanes on red river. Pardon me. Are already part of the city council-adopted bike master plan. I don't believe that -- that the actual design -- i believe an analysis has been done to ensure that we can have bike facilities on red river, but I'm not sure that has proceeded yet exactly to the point where they've determined a street section. It may be that it will have an impact upon parking along that street, and I'm not sure that impact will be consistent from one end to the other because, as most of us know, the profile of that street and the way it's used in terms of lanes devoted to one purpose or another varies quite a bit

up and down the street. Certainly as we move forward on that, as with other significant bike facility projects, we -- part of the waller creek team, if we're -- if we continue to sort of have a staff involvement, will work with the city's bike and pedestrian program, and as you know, they typically do a fair amount of outreach to affected stakeholders beyond -- including and beyond the bicycle community when they actually begin to lay these things out. So I guess the short answer is yes, the bike facilities along red river may have an impact upon street parking, but that -- we will have a process that allows input from affected stakeholders. The second thing, turning to sort of in some ways the bigger picture issue of what are the impacts of this -- you know, this broad waller creek project, the flood control project and the recommendations, if implemented, of our master plan on the red river live music community. Yes, we have had -- one of your questions was have we reached out to that community and had dialogue with that community. The answer is definitely yes, on multiple occasions, and that was one of the -- that was problem the principal topic of interest they music commission briefing, which occurred just last week. And so let me summarize for you what some of our recommendations are on that. You're absolutely right, you' touched on an issue. There is no question that -- largely because -- perhaps because of the flood control tunnel, which is -- it will change the economics of land development in the eastern part of downtown, 28 -- more or less 28 acres that are currently in the 100-year floodplain will be removed from the floodplain by the flood control project, and of course the very financing mechanism of that project is premised upon changes occurring in terms of the level of development. That may have impacts on those clubs. As many of you know, the majority of the clubs along red river do not own the land and the buildings in which they operate. They are on leases, so they are potentially subject to either changes in the terms of their lease, their rental rates, or I suppose even potentially if a total redevelopment is envisioned, nonrenewal of their leases. So in responding to that i wish I could come to you today with saying, oh, we've discovered the silver bullet that will allow us to preserve this great cultural asset that really has emerged along red river. I can't report that to you. We have, however, done a lot of work in a parallel project, the downtown austin plan. In fact, we have an entire piece of the downtown austin plan called the creative community report looking at these types of issues, and i can just run real quickly through some of the things which might come into play in addressing the concern you raise. One is an idea which is just in its infancy or embryonic stage right now, which is the idea of potentially creating a cultural mitigation fund, which would be supported by a fee. In other words, if within the area of the tif, you could say, new to redevelopment occurs, there may be we could consider imposing a fee that will occur upon the development of land and then we go into a cultural mitigation fund, which then -- that would capitalize that fund and allow that fund to step in and try to alleviate some of the ill effects on the live music community along red river. I should caveat my comments there by saying there are probably a number of legal issues, I know there are a number of legal issues that would need to be resolved with that, but that's one tool we've identified. As you know, we are also in the downtown plan working on a -- and we'll be bringing back to you with the balance of the downtown plan a proposed density bonus program for downtown. That could be used as well, and, in fact, within the waller area it could be prioritized to create incentives for either the preservation of existing space, live music performance spaces, or the creation of new ones in the event of total redevelopment of a site. Another tool in the toolbox might be an incentives program, to provide incentives for live music, reduce permit fees, utility costs reductions and so forth, or another option would be to utilize either the actual tool or some variant of it, like the business retention and enhancement fund, to take steps to offset the economic effects of the redevelopment that may occur in the corridor. There's a whole host of other things. Those are some of the tools that we've identified. We would love for, if we're

directed to move forward with this, to continue to work with that community to try to do as much as possible within the powers of the city to support that, because I know that is regarded as a cultural resource for the city. Anythi anythi ng else? Thank you very much for the briefing.

Thank you.

Council, that brings us back to item 23 and our status on that item is we're going to go in executive session upon a motion by council member spelman, which actually took the first motion off the table. So there is currently no motion on the table. So without objection, the city council will go into closed session pursuant to 071 of the government code for consultation with legal council to take up one item, and that is legal options under the posting language for item 23. Is there any objection to going into executive session on that item? Hearing none, the council will now go into executive session. Test test test test test we have concluded the closed session on item 23 concerning consultation with legal council. It is june 10, 2010. The time is 3:20:00 p.m. In closed session we took up and discussed legal issues related to item 23. No action was taken. We're out of closed session. So, council, we do have a number --

mayor -- council member shade. would it be possible for me to bring back my motion that was seconded prior to executive session? i think you need to restate your motion.

Shade: okay. My motion was to reject no-- 23 is to reject allied waste services and to close the rfp process 13, which is related to this item.

Mayor leffingwell: okay. I think the motion was to 23 and to cancel the rfp process, and we'll get to the rest of that in a second motion. Is there eakd second for that? Second by the mayor pro tem. There are people who have signed up to speak in light of the motion we have on the table, does anyone still want to speak? Come forward. Are you signed up? Come forward and give us your name and tell us why you think that this rfp process should not be discontinued. -- Should not be continued.

Good afternoon. My name is lee coon. I'm the general manager for allied waste here in the austin market, and primary reason I think that it should not be suspended or pushed aside is that -- and I'll -- if you're okay with I'll proceed with what I'd like to say, but we are the top bidder. We think it was a very fair process and we think that there's been a recent media attention, there's been swak meetings where there's been inaccurate statements made. This has been a very fair and thorough process, and up to this point haven't had an opportunity to address council to discuss this, and for those reasons I'd like to share and try to clear the record on a few things, something very, very important. We are not the bad actor that a few vocal folks, including a local competitor, assert that we are. We have operated locally and have been faithfully paying austin, texas in fees for more than 25 years. We have worked with you, the council, and your representatives, in every way requested to us during those 25 years. As an example, we committed to the community and to the city to close our sunset farms land november 2015. We agreed to a number of enhancement at that facility. We are committed in austin to shift our business strategy from one based partially on repsychly to one based primarily on recycling, and it has been asserted that we are undeserving of this contract based on a misguided representation of the operations at our landfill an of our former bond road facility. I'd like to set the record straight. We have operated safely at the sunset

farms landfill for 28 years. 20 Years without a single violation. In the fall of 2001 austin experienced some significant rain events and it was a perfect storm for us at that facility. We are at a portion of time in development where we had exposed cells that were susceptible to heavy rainfalls and it caused increased leachate. These rains created an operational issue that had to be addressed. We did receive an agreed order, and this agreed order contained four issues. Those issues were immediately addressed. Since that time, it's been eight years, we have not received a single violation from the tceq or the city. And that's with increased regulatory oversight from agencies. Also during the same time frame we began to pursue an expansion of the landfill. During that process there was unsubstantiated claims of poor operating conditions at our landfill. Tceq investigations and the finding of facts from the state office of administrative hearing determined that these assertions were baseless, and consequently we were issued our permits. Further, the hearing judge, after reviewing all the evidence, concluded, and i quote, "tjsa's participation in this case is a transparent attempt by gregory to delay, complicate, increase the cost of and with luc defeat bfi's application so as to gain a business edge on bfi, end quote. And as we've gone through this process and evaluated, it's clear to me that there's many similarities here. thank you. That was your time.

Yes, sir, I thought we had more time. all right. You have an additional six minutes.

Thank you. I appreciate that. In the same fashion I'll continue. Our reputation has a recycler operator has also recently been questioned by referencing the fire at the balm road facility. There was an accident fire that took place in 16, 14 years ago. Under a negotiated agreement with the city we continued to operate there until 2002 until such time we moved to our current metric boulevard location. We have operated there flawlessly since that time. We have an outstanding relationship with the north austin civic association, and actually they -- we have a letter of recommendation from them for this project in our proposal. We do not believe that the two isolated incidents accurately define our operating record over the course of 25-plus years of otherwise outstanding service to the city. With that being said, we certainly thank the city for a very thorough and fair rfp process and it's been s years in the making. We spent a significant amount of time and resources to prepare a comprehensive proposal based on all the elements included in the rfp. We respectfully appeal to you to recognize the legitimacy of the procurement process, the staff's preparation of a comprehensive rfp, and the staff's thorough evaluation of the qualified proposals. The city's rfp was structured to encourage creative solutions that meet the city's immediate core need for a single stream facility and many of the other components that will promote the city's goals. The staff evaluated proposals on numerous clearly articulated scoring criteria, including community values, total evaluated cost and demonstrated experience and personnel qualifications. The many strengths of our proposals, outstanding expertise and single stream recovery facilities, our strong financial capabilities, combined with our continued commitment to our communities resulted in allied being rated as the top respondent. Our public/private partnership provides the following key benefits: Significant city input and oversight through the design and operation of facilities. In addition, the city will net over \$1 million per year per the staff's own calculations based on our proposals. And the city receives ownership of this facility at the end of the contract. It's certainly been a long process to get to this point and it would be a shame to significantly deviate from this process now, certainly prior to staff being able to negotiate a very good contract. We respectfully request that the council give us two to three weeks to negotiate with staff to address any concerns you may have, real or substantiated on our performance. We're very willing

to sit down and discuss and put metrics in place to address any concerns you have. We have participated and will continue to participate by following all the rules and we will negotiate in good faith. Thank you. I'd be happy to answer any questions. thank you.

Than it's competitor which is which is award winning company, through the process we found that isi was not filling their landfill on a weekly basis which they were not required to do and buzzers were flying all over the landfill which is in the flight path of the airport. Eventually city council in that case rose to the occasion and rejected the contract and it is being closed and likewise you should reject the staff's recommendation for these plum recycling contracts to a company that continues to be a bad neighbor. I myself have been outside the bfi landfill and filed complaints with the tceq. Unfortunately if you are not a property owner they don't investigate your complaints so we clearly can't rely on the tceq to determine for austin what constitutes good operating, because they fall short in so many areas. We look to you to begin this process anew. I believe we need new bids for a short term to cover the short term and last night at the saws way services directors meeting, the direct for had a very compact but doable schedule to recontract local options. I think we should put that forward but determining a long-term the arrangement today without having all of the proposals from responsible companies on the table for -- for comparison is putting the recycling cart before the recycling horse. This proposal -- the question for proposal and the matrix used to score the proposals before you today was used before the sauce waste services director was hired, before the master plan consultants came into play and before the master plan is developed. We need to have this facility be developed in the context of that master plan. Let's have the good folks on hand working for the city use their expertise to the fullest. This is a long-term contract for 20 years. We need to get it right. Council, without objection, that is all of the time for public comment, motion on the table.

Mayor I would like to make a motion to substitute. Councilmember cole?

Cole: I would like to make a motion to reject number 23 and bring it back for the 24th meeting due to the discussions we had in the executive session about the limitations of the posting language and at this point I think in the interest of transparency we need to consider that. Council council lmember cole proposes to withdraw the item on the agenda and bring it back on the 24th. Second. Councilmember shade.

Spelman: I will be voting against that substitute motion because I believe for us to -- because I don't believe with all due respect to the speaker, who came before us, I don't believe that this current r.f.p. Process resulted in proposals that I am ready to support and so I would like to see that we begin some sort of different process and we will have the most options, if we close this process today and move forward, in future weeks with whatever other options may be out there. -- council council lmember cole.

Cole: I see robert, but is bob here? Can I get some information about what happened at this last meeting last night? ge tter.

Mayor, councilmembers, bob getter with the solid waste services department. getter, last night you were at the solid waste advisory committee meeting and I understand because we received a resolution from

them suggesting that we cancel all of the business and actually rebid all of the -- all of the bids and rebid the contracts you provide information of how that be done. Can you share that with us?

What I presented was the top bidder allied features and the staff recommendation for allied as well as some of the features for balcones as well. I also presented a timetable for the short-term arra processing recycles given the current contract for september 30th.

So I guess I am getting to the timetable, if we were to throw out all of the bids, all of the recommendation of the process, when we would end up actually having a decision before us?

The timetable presented last night was in regards to short-term solution, not long-term. And was under the assumption of an action at council on july 24th and bringing a -- a recommendation to council on -- I am sorry, back up, an action by council on june 24th and bringing the council recommendation on july 29th.

Cole: The june 24th meeting you would be expecting an item for council and then bring an action item to july 29th and you were contemplating a short term action and the recommendation was a short-term action also recommending that but as well as a long-term solution in terms of selecting the ultimate? Is that correct?

That's my understanding.

Cole: Okay.

Mayor Leffingwell: Councilmember spelman.

Spelman: We were interested, bob, in a long-term solution as possible and we had to open the bids before so we had to es at the end. If we were to issue another and go through the usual drill, at what point, at what date do you think you would be before us again with the recommendation?

I don't have a timetable fully laid out but that is a process and I -- I believe we would need about six months for this proguess this reprocess, as I understood, it took about 18 and a half months?

Yes.

We shave a couple of months because we have gone through it before but not very much, still talking about a 6-month period BEFORE YOU are McWith us again?

Yes.

Spelman: Okay. Is there a reason for your point of view believing that process would produce a different set of bidders or different set of proposals in the second half?

A second proposal might encounter additional bidders or a change in bidders. I don't perceive much of an outcome difference, given current market conditions.

Spelman: So what is driving the financial aspects in particular of the proposals we see is current market conditions, not the r.f.p. we actually wrote up?

That's my belief. Yes.

Spelman: Thank you, sir.

Cole: May I have one more councilmember cole.

Cole: I know you worked in a number of cities before and are considered an expert in your field and I have some concerns about protecting the sanctity of the bid process, even though I understand in this situation we may be able to just pick a firm like we did with green star, but can you give us any type of information or your opinion about bidding contracts as opposed to the council simply selecting a particular firm?

The -- in most states -- I have worked in several states and in several situations over my career. Most situations, the health and safety codes allow for a nonbid situation, and almost every case involving a large bid such as this, I have always preferred a bidding process, I believe it is more transparent in the public in selecting the proper path for the future.

Thank you.

Mayor Leffingwell: Further comments? I just say that I plan to vote against the substitute and adopt the main -- the main motion for the simple reason I believe the cleaner. There are less legal questions involved and it allows us all of the options that we would have under the substitute motion plus other options. Councilmember riley.

Riley: Yes, I am not satisfied the outcome of this process. I would -- by rejecting the bids before us, we would still have the opportunity to engage in discussions with -- with any of the bidders. It does not limit our option; so to close this process and move on so i will be supporting the motion on the table -- no opposing the motion on the table and supporting the original motion.

Mayor pro tem.

I saw one of the stop dents wanted to address the council and he was signed up to speak but he didn't get the opportunity. Harry, would you like -- would you like to without objection.

Mayor Leffingwell: Without objection.

Martinez: Do you want to address the council?

Mayor Leffingwell: Go ahead.

I believe I have 3 minutes from dave stevens as well who is present today.

Mayor Leffingwell: You can take 6 minutes.

Is there thank you, my name is kerry getter, the ceo of balcones resources. , the single stream was a fair process. I want you to know that we respect the process and will respect your decision regardless of the outcome. Given the volume and detail of information that was reviewed by all of the respond -- from all of the respondents, I am confident that inadvertent miscalculations were possible. The balcones proposal alone was 240 pages. In the case of balcones, i would like to address two areas where we received a low score and incorrect information has subsequently been published. First, in the category of total evaluated costs and second in the category of financial capability and capacity. Regarding total evaluative cost. The march 2010 recycles sales to the city as reported by the staff are not consistent with our proposal. The matrix states the city would have owed balcones \$31,300, when, in fact, balcones would have paid the city \$55,000. That's a difference of \$86,000 for one month. The error I just described led to the second part of the miscalculation in my opinion. Utilizing the january through may 2010 actual material selling prices by balcones the net present value of the estimated material flow would yield roughly \$2 million, not a negative \$13 million, as stated in the matrix, a difference of \$15 million. Additionally, the interim transition processing cost of the city is overstated by \$2.3 million. To be fair, this fact was not clearly stated in our proposal. Now, let me address for a moment the second area of concern related to financial capability and capacity. The scoring matrix indicated that balcones ability to with stand a long market downturn was in question. Let me explain why we have the financial capability and the experience to with stand a prolonged downturn. We have been in business 16 years at austin. Our principals have over 30 years experience in the industry. Our company directors have founded, owned and been responsible for up of the largest publicly traded recycled content paper mill groups in the united states. Collectively, we have already experienced several market downturns, including most recent which began in the second quarter of 2008 and has been the most severe in the history of the industry. Incidentally, our reserves are adequate to with stand 35 consecutive years of a year like 2009. However, 2010 has been very kind to us. It was during the recession that we received financial commitments for all funds needed to design and construct the proposed single stream plant with the latest equipment including excess capacity for future growth. Our balance sheet was strong in 2008 and is even stronger today. We received financing and bonding commitments for this project in the most difficult bank borrowing environment since the great depression. That's a fact I am very proud of. Thank you for allowing me to address those two areas that are so vital to our company as well as the r.f.p. Process.

Mayor Leffingwell: Thank you. Councilmember morrison.

Morrison: I will not support the substitute motion but the main motion. In the end I think it is important to step back and realize our goal here is to get the best service to serve the public, do the best job for the best money and I think we still have homework to do to find that option, so I am looking forward to that future work.

Mayor Leffingwell: So the vote will be on the substitute motion first. All in favor of the substitute say aye.

Aye.

Opposed say no.

No.

Mayor Leffingwell: That motion fail on a vote of 4-2 with councilmember riley, mayor pro tem martinez, councilmember shade and myself voting no and councilmember morrison, 5-2. So that brings us to the main motion. Councilmember shade.

Shade: On the main motion, I did want to clarify that it was to reject all allied and all of the proposals and close the r.f.p. process. I think I had just said it would be rejection of allied and I was alerted by city legal to properly make that motion and reject all three proposals I needed to state that up front. Verified motion is to reject all proposals and cancel the r.f.p. process.

Shade: And I want to thank those who have spoken and to propose and recognize that we do have a new solid waste director on board. It is our job to get the best deal possible. We cast a very broad net and in the process gathered a lot of information about a variety of different business models that might make sense for this community which is why I am prepared, like I said earlier to reject these but it is no disrespect for the folks who applied.

Mayor Leffingwell: All in favor say aye.

Aye.

Opposed say no.

No.

Mayor Leffingwell: That passes on a vote of 5-2 with councilmember spelman and councilmember cole voting no. And council, item number 13 as related -- is no longer relevant so unless there is objection, I will withdraw number 13 from our agenda permanently. Objection? -- number 13 is withdrawn. That brings us to item number 29. Twenty-nine was pulled by councilmember morrison and we do have a number of folks signed up to speak on this item.

If we could get the speaker and then I would like to make some comments, thank you.

Mayor Leffingwell: We will start with our speakers, first there is rick harden signed up against. Rick hardin. Well, we don't have any microphones in the lobby. Rick hardin. Debbie russell. We will go to our next speaker and come back. I will get a chance to get back in the room. The next speaker is brian rogers and is linda curtis in the room? And jean mather? Well, you are signed up donating time, so brian, you have nine minutes.

Thank you. My name is brian rogers and with change austin dot org, I support historic zoning and preservation but not as the way the city currently administers the program as you will see. One day last spring I am pull going my driveway and look across the street and see my neighbor nick who is stomping around in the yard and waving his hands and he sees me and comes across the street without regard to traffic, nick is a cool fellow but he is mad about his property taxes. He goes brian what am i going to do -- my appraisal shot through the roof. We are looking at that. So nick solves the problem and goes and gets historic tax exemption and now nick gets \$10,584 on abatement. He went for it because it was about property tax, not about historic exemption. Both sides of my house have historic exemptions. Now, eddie who lives next to nick, he is getting his. He is one of the people going after exemption and so there is a gold rush on my street. This is my house. It is a beautiful house. I think maybe I should go and get my exemption, right, so the entire neighborhood will be excepted from taxes and we will -- exempted from taxes and we will outflow our taxes on everyone else. What a world. You know, let's look down -- this is a guy on enfield, talk about gold rush. This guy has -- you granted him \$22,884 annually forever in the tax abatement. This guy with a mercedes, \$36,164 annually in perpetuity. This guy takes the cake, literally the cake, the silver wear, the china, \$45,000 annually forever. The thing about this fellow here is his house was listed for \$5.9 million. Well, it's on the tax roles 9 so he is already getting a 50% tax break, all right. Now he's got the abatement of 45,000, but, look, the pool -- -- and if pool houses were constructed in the 1960s when the new den was added, two porches enclosed, a new garage and breezeway were constructed. In 1999 conservator was added. Well, okay, all of that stuff gets the abatement, also. That is just not fair. On tuesday -- I met with a local historic preservation architect who told me that austin has the most generous program in the country. I made phone calls and did research. I called charleston south carolina, dallas, yesterday, galveston, san antonio, and nobody gives away more than austin, not by any stretch and talked to the historic conservation manager from alexandria virginia who was kind to spend time on the phone with me, he was the first city architect there and he left award winning practice in 1991, where he was also director of the dallas historic preservation league and project manager of the restoration of the texas governor's mansion in the 1980s. cox about austin's tax abatement. She was speechless. He had never heard of any kind of abatement program like ours. He said, quote, that's the most generous I have never heard of for historic ." that'sing from a guy who knows. But he explained how alexandria's program works and I think we can all learn something from it. For example, the homeowner, let's say the homeowner grants preservation easement that covers the facade of their house, the value of the'sment is appraised. It is donated to nonprofit in perpetuity and the homeowner gets a deduction on their federal tax return. I think he said the annual -- the average easement is around \$100,000 so you get the conservation easement and you get that amount and it can be carried forward and applied against your personal income taxes for the next five years, so, okay, so the federal government will pay for these privileges but you don't have to put it on the citizen. So in fact there is other kind of preservation easement, open space around the building, interior preservation, easement and again it is a one time thing and comes off federal income taxes but now it is budget time in austin and we have to hear about all of the sacrifices that we citizens need to make while you guys are giving money away to mansion owners. Let's put a moratorium on owner initiated zoning requests for a few months. You can still leave staff initiated requests in place. There are far better answers than what you have come up with. On this quick fix with no input from critics, which accomplishes nothing in the total likely to be approved during this interim period. The latest solution intends to put a fixed cap on the city's portion, but let's not pretend the city's responsibility ends there. We all know when the city says yes, it automatically approves aisd, travis

county and acc. Austin is the driver in this process and these taxing jurisdictions don't perform their own historical worthiness exam, they depend on the city of austin. If austin is a poor gatekeeper in the process then aisd, acc travis county all suffer needless tax loss. Your responsibility extends to the entire tax abatement of all of these jurisdictions. The solutions of the new guidelines in the memo only demonstrate how willing you all are to release your death grip on these abatements. It is like bargaining with an addict on cutting down their use. I promise to cut back the mansion give away so only one per month unless nobody is using it and I can go back to three month to 36 per year and I promise to study the issue and limit my future intake. I feel like I have gotten to know each of you somewhat over time and for the life of me I don't understand why you don't see the stunning disconnect between granting these wealthy owners lavishing all of these benefits on them on taxes while ordinary citizens are struggling to make their -- make ends meet. We were doing property tax workshops all around the city and people are frankly scared. They used to be angry about their property taxes and now they are scared they are going to be able to stay in their houses. It is a real problem and, you know, come elect time, somebody is going to run ads saying mayor, councilmember blank insert your name here, voted 50 times to give these wealthy homeowners giant tax breaks and roll the mansions two per second. So if you think jennifer's kim's stemware played well to the populous, you can imagine how this will burn down a campaign and if you don't believe me, we can all call david butts, maybe we will tell us and let me finish by saying the statesman editorial last december said, by now the city council must be aware that at its historic landmarks program has become a tax give away for the wealthy, city council would be better to suspend the program and revise it and revise tax breaks that there too generous. Amen to that. Thank you.

Martinez: The next speaker is lori michelle. Lori, you have three minutes.

Hello. I want to preface my comments by saying I am not against historic preservation. I think it serves a very important role in our city, but I do think that the program that we have is broken in a very serious way and I think each and every one of you would agree with that and I think that's why you have proposed this, what is it -- an ordinance change or recommendations change, change the ordinance, but it is not going nearly far enough and it is not addressing the true heart of the problem. I am an appraisal litigation lawyer. I know something about property values. I know what it means for a property to be utilized to its highest and best use and the public policy behind giving tax breaks to the properties who are willing to undertake historic preservation is directed to provide a financial incentive to those property owners to forego the highest and best use of that property. And what we have here, in the city of austin is a program that provides extremely generous tax breaks to properties -- 50 in the last two years -- that are operating at their highest and best use. There is no incentive needed. These properties are not in threat of demolition. There is no incentive needed. These property owners have the wherewithal and the means to maintain these properties and have for years. There is no incentive to give or objective -- positive objective served by giving these property owners significant tax breaks. I am a lawyer and I would have to say for the last 6-8 months every time I go to court -- and it doesn't matter if it is here or in williamson county other counties and I am watching cases being called and they are foreclosure cases and there are people day in and day out of this begging judges to give them 30 more days to keep their homes and for you all to the say the best we can do is to limit these huge give aways to the city's richest people owning the most valuable property to the only 36 per year is shameful. So, I would ask you to stop what has become -- what is and we all realize a defacto, unfair policy. If you continue this for even one more home,

you have now implemented a dejure with full knowledge of the unfairness of this program in continuing it. and I would ask you not to go there. You are better people than that. This is a better council than that. Thank you.

Mayor Leffingwell: Okay. Mandy dealie, jackie shrad in the chamber? Okay. Mandy, you have 6 minutes.

Okay. Thank you. Before I make my remarks, i am not sure exactly what resolution are we talking about? There has been so many versions floating around.

Neither do we.

I would like to know what the one at the moment is.

Mayor Leffingwell: Can somebody give her the copy of the latest, please?

The last one I saw was posted on anc talk last night.

Mayor Leffingwell: I don't think I would go by that one.

I understood there might be some changes and I want .. Okay. Thank you.

Is that the same one you saw on anc last night?

No, it has one change on it.

Morrison: Pretty close, though?

It is a pretty significant change. My name is mandy dealie. Mayor leffingwell, pro tem martinez and councilmembers, the heritage officer of austin asks austin to seize this opportunity that is presented in view of austin's preservation program. We do not propose the adoption of interim measures while such a review is being conducted but cannot support the limiting act for the landmark association to limit designations. I realize this new version limits but not as much as the original one had but it does continue to limit the ability of the historic landmark -- initiate designations. In addition, we believe it's crucial to recognize that the measures proposed in the council resolution do not present good preservation practices and should by no means become a permanent part of the city's preservation program code. Therefore, the historic heritage society strongly urges you to adopt these temporary measures with the with a definite expiration date. Furthermore we appreciate that these amendments are accompanied by the council's initiation of the review of the economic's of the city's preservation program. Historic preservation provides significant economic benefits to our city as well as vital -- a vital component to -- our quality of life. The preservation incentive should be carefully and thoughtfully constructed to support the goals of the program and ensure its maximum results. The heritage society offs to help the historic landmark commission in this effort in any way possible. We strongly recommend that this group study our peer city best practices and incentives for local historic districts and historic landmark zoning and the goal of making recommendations to ensure that austin's program is structured the meet the goals of

preserving our city's rich, cultural and architectural past. Additionally, we open the limits that the historic landmark designations are considered the council will direct the city manager to work at the same time with the historic landmark commission to develop procedures to facilitate the establishment of local historic districts. I recognize that there is a lot of misunderstanding about the financial benefits of historic preservation and I hope that all of you will use your positions of leadership to respond to this fetious misinformation that is being propagated. We hope review of preservation program will be used as an opportunity to study and update austin's policies to stand as a national example of effective preservation practices. Thank you in advance for your attention to this issue and to all of your ongoing work to build a great future for our city while respecting our valued heritage. Thank you.

Morrison: dealie, i have a question, were you involved in the drafting of this? Was your input sought in the drafting of this item?

It was sought and some -- some was incorporated and then it was taken out so there has been a lot of versions. The concerns that i expressed were ones we had hoped would be addressed in this version, but they were not, so that's why I wanted to make the point of it now.

Shade: And do you have a belief that you might have shared with other people about any councilmember up here wanting to dismantle the preservation program?

I had heard from a council aide that there was, in fact, a member of the council who wished to do away with the historic landmark program, and i checked with several councilmembers, assured that is not true.

Shade: So you feel confident that is not true now?

Right. I don't know why I was told that but I feel confident now that it is not true.

Shade: Good. Thank you.

Thank you.

Mayor Leffingwell: I have one question for you, ms. dealie. Is it not the case that this is simply a resolution directing the start of a process.

Right.

Mayor Leffingwell: And had we not been through many iterations of ordinances of all kinds, not just this, that are amended and changed in many different ways by the time they go to different boards and commissions and back to council?

Absolutely.

Mayor Leffingwell: Okay. Thank you.

Thank you.

Mayor Leffingwell: Spelman spelma n.

Spelman: I would like to dealie a question, also. I realize this has changed, some ways large and some ways small since you have looked at it closely. But I want to direct your attention for a moment to the second to the last page.

I gave my copy back.

My apologies.

But what is the difference between the two of them?

I am sorry.

The second to the last page, whether it is the green or the yellow copy, it is almost the same in all respects here, it says be it further resolved, state manager is directed to 1, 2, 3.

Yes.

Work with historic landmark to prepare recommendations to limit total amount of property tax exemption for each property, two, work with historic landmark to prepare recommendations on other aspects of the identification and designation process, benefit structure and allocation of city resources and three prepare an analysis of economic benefit for historic preservation. From your point of view, what this does is puts large aspects of the historic program in play and direct it is the city manager to look at this in a fairly broad angle. From your point of view, is there a down side for that, are they looking for narrower or broad approach?

It is awfulfully broad. I understand the need for flexibility in addressing this and the desire to look at other cities and to see what they are doing, but this is vague and does not off a lot of comfort. If the charge were more specific, especially along the lines of the letter the I read as to what the landmark commission might be looking at, I would like it a little bit better.

Specifically looking at best practices in others too,.

Best practices in other cities an see what our peer cities. There was a speaker earlier who talked about how we are way out of line and I think it would be helpful and constructive to look at other cities both in texas and outside.

Spelman: I very much appreciate that suggestion and perhaps we can incorporate it.

That's great and I also hope that you will include in that a recommendation of how to the facilitate historic districts, because as you know, that helps to protect the historic fabric without giving specific and broad

tax benefits. My concern -- one that i have heard is that some people are against historic zoning. Others are saying we are against historic districts, and that each one -- they are pointing their fingers at each other saying this is how you ought to go and unfortunately, you can't have it both ways. Thank you.

Councilmember morrison.

Morrison: I wanted to ask you another question, dealie, in terms of opening up the big question and putting everything in play, that sort of happened a couple of years ago and i believe -- did you serve on that task force?

No, but I followed it.

Morrison: You followed it and do you recall how long it took -- there were other issues that were addressed but how much discussion and how long it took to --

I would like to defer to sadowsci who was much more involved in the process. He can answer the questions much more accurately than i can.

Morrison: Thank you, saboski, I want to follow up on this because i have concern willy-nilly opening up the process because we had the lengthy balance dialogue a couple of years ago and if we -- i want to make sure that we don't disregard all of that and it is a drain on staff resources to do things, you know, in an unfocused way, so do you recall how long and how much effort that was?

Actually we had three different task forces. The first one was very inclusive. That took about a year and a half. To develop the recommendations. There were still some outstanding issues from that first go around, so that task force was reconvened, a year and a half later, they metaphor about 6, 7 months and then the third one was in the last year, and that was -- that was much shorter process. A couple of months.

Morrison: And some of the work that came out of that was really a tightening up and a more constrained process for identifying criteria and what landmarks had to -- what they needed to do to qualify.

That's correct.

Morrison: Is it your sense it is a different process now at this point, compare to before we adopted the new standards?

Yes, it was one of the big concerns of the first task force is that our criteria for designating landmark, our criteria were too vague. We used to have 13 criteria. Now we are down to the a much more specific set. We are very much in line with our peer cities in texas and throughout the country in our criteria for designating historic sites.

Morrison: Have we done any assessment of how effective those new criteria are? I don't know if there would be some measures that might be interesting to look at to see, you know, where are there properties

that aren't qualifying that maybe some folks think they should or vice versa, some things that are qualifying that are perhaps outside the bounds of some fear of sanity? Have you -- do you have any assessment of that?

I don't have any kind official assessment, councilmember, but I do know one of the big thing that is all task force -- everybody looking at our criteria had evaluated was not to just be able to have criteria that addressed architectural master pieces or things like that so that we can landmark smaller homes and the homes of ethnic or racial minorities in the city and allow our criteria to have that flexibility.

Morrison: Great. Thank you.

Yes, ma'am.

Mayor Leffingwell: Next speaker, linda team. Linda team is not here. Linda team is for, incidentally and marianne doorman against. Is marianne doorman here? Welcome and you have 3 minutes.

I am here speaking -- i am on the board of the olden field homeowners association and I am reading this prepared statement made by our president, marlene romanzack who is out of town and I am not sure which -- if she has the latest ordinance or what the situation is. We oppose this resolution because, number win, the lack of public notification and the language unveiled today is significantly different than that posted, council has publicly committed itself to operating in a transparent fashion and the public should have an ability at a minimum to be able to review and comment on what is being proposed, number 2 limiting h zoning casions to 3 per month and only one of those for local historic districts or national register districts is completely arbitrary. What we need is a historic inventory survey before such limits are discussed. By the very nature of how austin was developed, you have neighborhoods that have large inventories of potentially historic homes. Number three, unintended consequences. Limiting the ability of the landmark commission to initiate historic zoning takes away the only enforcement mechanism available to protect structures. The word addresses -- also only addresses demolition. When they review other permits as well. More threatening, the language in number 2 of the resolution contains no exceptions for demolitions or any other permits meaning that the commission would have no about to initiate a case in a national registered district or local historic district once the slots are taken. Regardless of the merit or significance of the property, this creates an incentive for those seeking the scrape of historic structure to wait until the slots are filled and file a demolition or relocation permit. Number five, the current program with the result of balanced task force, this resolution allows the city manager to work with landmark commission to make recommendations. What about the other stakeholders? Why are they being excluded when the whole structure of the program would be the benefits of historic, the additional tax revenues generated from improvements made to historic structures, the loss of historic structures through demolitions and significant incentive remodels have not been discussed. There is no harm to -- in postponing this item until a more thorough discussion with multiple stakeholders can take place, if there is a historic zoning case that comes to council, council has the ability to postpone the case or deny it out right. Because of the limitations not only owner initiated cases, but those initiated by the city, this action may impact the city's status as a certified local government under state law impacting grants and tax status for the city. Has the texas historical commission been consulted to determine this risk? thank you.

Mayor Leffingwell: I've got a question for you. Did you hear what I just dealie, about the fact that this is not a change to an ordinance. It is a resolution directing a process to begin? Granted it does set framework but it doesn't mean that -- and it specifically is directed back to the historic landmark commission, opportunities will be there to have all of these discussions about the questions you raised, others have raised and more.

Thank you.

Mayor Leffingwell: So councilmember shade.

Shade: I would like to also say that I did review her e-mail and also thought that there was merit in clarifying that number 2 item and so I would expect that will be part of the discussion that will have -- when we ultimately go forward with this resolution. To be absolutely clear that the intention is -- that demo permits and relocation permit issues will certainly allow and enable the hlc to initiate cases, so thank you and please tell marlene thanks.

Mayor Leffingwell: You have a lot more public hearings to go to until this is done. Rick hardin. Rick hardin. Is debbie russell in the chamber? Debbie. Okay. Cindy loftin. Ben schulz. Is ben h okay. Rick, you have nine minutes.

Thank you, mayor, mayor pro tem, mayor, council, it is a privilege to come to you today. I have been asked by some of the folks that have been discussing the merits of the historic landmark program of --tax exemptions to give a bit of my background because i was reluctant, very reluctant of this program because I support it strongly. I am sorry lynn team is not here today because I respect her. She is one of the finest voices on the historic society. This program over the last 30 years and this enforcement of the review of landmarks has changed in my perspective and it has become quite broken and you heard some of the criticisms. Obviously council recognizes part of the problem and I -- I thank the mayor pro tem and councilmember shade and spelman for focusing on it. You have really stale air and voices that echo off one another and don't really see the problem and they have given to you, the council, a problem that they really have helped create and those voices are your city staff, landmark staff, the historic landmark commission and unfortunately the heritage society. Let me start this powerpoint presentation. I have done a number of landmarks zonings and restorations in austin in my life, none of which sadly have made me much -- or really any money, but it's almost an addiction. I do love our history and i do love historic landmarks. What you see before you is the roy thomas house which we saved from demolition on the villas of guadalupe project and restored and zoned it historic. We won an award with the heritage society for that. I own and have restored the james brown house. This is the oldest house in the vermont district. It's a good example of why you need historic tax abatements -- exemptions because it is very expensive to maintain that particular structure, very inflexible, hard to lease. This is a white springfield house, it is a house i purchased and restored and zoned historic. The tmi castle -- castle hills iconic structure had only one lot, 50 by 100 or 75 I think it was in the middle of the building that was soaped and I bought it, restored it and added two additional the lots to the historic site by zoning them. Currently I just completed the 1880 railroad depot in lampasas and am working on the wpa1936 federal style post office. This program is broken. And what you hav houses, mansions, really, that are being given tax breaks through

the historic program that serve no public purpose. This is precious money and we have enough in peril historic landmarks to be in our city that need to have this money. When you give it to someone who doesn't need it or a home that doesn't need the repair, it already has been reared stored and when you lower the bar for what it is to be a landmark, you basically take the entire program and subject it to criticism and the public loses faith in it and I value this program and don't want to lose it. So I do think we need to focus on how do we fix it and that focus needs to be on high-end single family homes. Zoned homes. Historic landmark designation is not a neighborhood planning tool. Neighborhood planning is. It is not a historic district. That has its own purpose and I -- and there is one district in Austin, there is two that are currently active. Hyde park is the only one of those I have property in and I have supported it. We have signed up and supported that district. So you have heard that 50 properties in Pemberton Heights and Olden Field received historic zoning and tax exemptions recently. I won't go through all of this text here but basically the average value of the home that received historic landmark designation in the last two years, mostly December 2009, are a million 425. They are all nicely restored. That's what our neighborhood looks like now. Newly historic, and green truly historic, older type properties and I ask you under the current scrutiny and enforcement you are receiving, every -- almost every house in our neighborhood would qualify and some of the finer ones haven't even applied. Pemberton Heights you have 30 million in home that is went off the tax rolls the last two years, each over a million dollars each. That's what their map looks like. The red being the new ones. All right. Let's talk about some of these structures. What I did was went through and walked around my block. I didn't go through every one of these 50. This is the president of the Olden Field neighborhood association's home. If you look here to the left of the house, you will see to the left of the door two windows, one over the other. It is a hard on see, but today, the home that came to you for zoning for historic landmark status has an entire new wing added on to it. The forced has been altered. The historic staff's review sheet, on that it is not disclosed. What has been disclosed there was a small addition in the rear. That is not correct. It is inaccurate. The applicant didn't correct it. Staff didn't look at it. Landmark didn't catch it and they let you down by not doing that. That's what they are supposed to do. Here is the next door neighbor to that house. And by the way, these are nice people and fine houses and they have done a wonderful job. I have no problem with these, they are just not landmarks, and not only that, even if you think they are landmarks they have been severely tampered with and nobody asked them to do the right thing. And when are you going to give an opportunity that is better than when you are bestowing tens of thousands of dollars on perpetual entitlements to them. This is what this property looked like when I moved into the neighborhood about 8 years ago. This is it today. You cannot see it. The backhoe dug a trench and planted plants through the entire property. If you do peek over the fence and the hedge, you will see two structures that are not Italianate, they go back, that is an Italianate house. That's what's been added in the backyard. I could find no building permits for either of those. This is a 1956 Sanborn map and the arrows went to 11 Niles Road and that is the first one dark green and 9 Niles Road and then I will show you two more in a minute but this shows you these are additions this shows you they were not there. I am not sure why this is a landmark. In the 1608 Woodlawn and if you notice this, now look what it looks like today. All of the brick is replaced. The front yard completely out of period. You have seen this one. 9 million -- 7 million house, and the problem I have with this one is where is the public purpose? -- where is the need why are these funds being used here when they are so badly needed elsewhere? I see I ran out of time. I do have some ideas some -- how to fix the program. I hope you would -- you will reach outside the stale air of this trifecta that is giving you advice as stakeholders and get stakeholders that are really walking the walk.

Mayor Leffingwell: Thank you.

Thank you.

Mayor Leffingwell: We appreciate your advice as we go down this path, also, mr. hardin. Those are all of the folks that we have signed up to speak. Councilmember morrison.

Morrison: Thank you, mayor. I want to certainly acknowledge the -- that we have some issues to deal with and I think at the end of last year, which sort of raised this situation for us, looking at the whole slew of historic properties coming in this one area and, I think also, it is certainly time to re-look at the amount as staff mentioned, maybe perhaps putting in a fixed cap. I think when we last looked at this and set the situation the way we have it now, 2004, 2005, whatever, we didn't have 30 million-dollar homes in the city, so having the percent as opposed to a fixed cap meant something so, you know, circling back around and looking at that makes a lot of sense. I am concerned with what is -- what I see yellow and I guess green, too, I guess I will work from green. I am concerned mainly about what was just added yesterday and that is the idea of opening the whole process up for discussion, because as we've discussed it was -- it was not too long ago that we changed the criteria and we changed the process in a pretty significant way. [One moment, please, for change in captioners]

we've still got some that are -- landmarks that are falling outside where they should be, then let's look at what those are and let's figure out how to fix them rather than opening it up. I think that it's also very important, something that's been added here, the -- doing an economic analysis of the benefit that historic renovation brings to the city of austin. The texas historical commission estimates that it brings \$140 million benefit to the austin area, and we need to keep that in mind. When we do economic incentive packages now for corporations to encourage them to come to austin, rogers and his good work, we as a city have all come to acknowledge that there are direct and indirect costs and benefits, and only looking at the tax exemptions that are going on is only looking at the direct costs. We need to make sure that we keep the direct -- the indirect in mind also. I'm glad that that is in there. And secondly, I want to mention that as always one of the foundations of why we are where we are right now is that we don't have a proactive preservation program that has -- that knows what our priorities should be for historic preservation, and proactively reaches out to those areas of town and puts programs in place that will encourage them so that we can have equitable and broad preservation across all our significant historic resources, whether they're grand or not so grand. So with that what I would really like to do is first mention the good news is that hopefully we'll be hearing this month about a preserve america grant that we applied for to work with the university of texas to do the historic resources inventory that would provide the foundation of that proactive preservation program. So we'll keep our fingers crossed that we'll get that and we'll be on our way with that. So what I would like to do is make a motion that we approve this, recognizing the frustrations of the public and that it has been very difficult to on top of what exactly is in front of us, but that we go ahead and approve it but with the following modification, and that is under the be it further 2, that we would -- we would strike some of that because that's the that opens everything up. That we would strike -- well strike the words "any other aspect of the historic property identification and designation process, the benefit structure of historic properties and" and then it would just continue reading -- it would just therefore read, "work with the historic landmark commission to prepare

recommendations on the allocation of city resources for historic preservation purposes. And then I'd like to add a 4 to actually ask staff to work with the historic landmark commission to do the evaluation of how our program is working, what's falling outside of the bounds. Then we can focus our conversation with the commission and the community and make sure we don't waste our resources but we'll target what needs to be fixed. 4, to work with the historic landmark commission and other stakeholders to perform an evaluation of the effectiveness of the 2006 revision criteria and process for historic landmark designation and to draft an approach to proactive preservation and outreach to encourage preservation in all historically significant areas of town. So just in a nutshell the motion is basically to -- instead of having a whole big -- opening up a whole big conversation, to ask staff for some foundation on how our program is working, and from there we will be able -- from there we will be able to figure out what kind of conversation we have and target what needs -- motion by council member morrison. Council member shade, second? I'm not sure -- no -- let's see if there's a second first. I'll second for discussion. second for discussion by council member cole. Council member shade? so my -- I'm -- i guess my -- you're doing it in -- so you have two amendments to the current version that we're looking at. right, it's to add two additional things to work on, right.

Shade: okay. and, you know, I see some legal folks in the background scurrying around, and I'm wonder, are you worrying that maybe we're not posted for that or something?

No, we were just trying to get the words as you were saying them. And we got every third one. that's just a motion.

I'm the law department and I was actually most concerned that I was working from the same starting copies that you were, so --

that's correct.

The green copy? Okay. Thank you very much. yeah, so -- okay. So hopefully everybody has got that. It's merely to -- instead of opening up the whole conversation, asking staff to help us figure out what we need to talk about, and then we would go from there. motion and second on the table. Council member shade. I'd like to make a substitute motion that our starting place be the green version, and that -- well, i just -- I'd like move that we -- to move that we approve the green version, the substitute motion. council member shade makes a substitute motion that delay the posted version of the resolution in green, secked by the mayor pro tem.

Question? council member morrison. I wonder -- we got a fiscal memo on this on what was posted but did not include opening up the whole question, and our fiscal memo merely said it's going to have a positive impact, it will save money because fewer -- potentially it might be zoned historic. I have to say that it doesn't actually acknowledge the positive benefits, economic benefits, but that's an aside. My question is, do we have a fiscal assessment or how much staff time it would cost us to have this conversation, opening up the whole issue of historic preservation process and criteria?

Jerry rusthoven. No, we don't have the analysis of the time it would take. We routinely process code amendment and what we typically do, we say that the staff is available to process the code amendment as directed and there will be no additional expense. The one thing I see here that -- so again, just processing code amendment, looking at the cap, looking at the -- limiting the number of cases, that can all be done by existing staff. It's just a matter of time. That's what we do for a living. The one thing, though, the economic -- the analysis of the economic benefits of the program, that could have an fiscal impact. What we'd do first would be t out and look to see if there were any existing studies, see if the texas historic commission or perhaps the austin convention and visitors bureau have any prepared studies that would state that fact, but if they were desired by the council to go hire a consultant, obviously there would be a fiscal impact of that.

What about staff time for supporting a task force that might take a year and a half?

Well, we would not hire any additional staff, so it would be within the -- it would be just a redirection of the existing resources.

Morrison: thanks. I just wanted to make the point that I think it would really make sense to target what we're going to be talking about. And I won't be supporting this.

Shade: I have a question. council member shade. there's been a lot of discussion about the confusion of various posting and I share the frustration with that and apologize for the public for that, but the version that I see that was originally posted has in it the words, to prepare recommendations -- this be it resolved that we're talking about here is that the city manager work with the commission to prepare recommendations concerning allocation of city resources for historic preservation purposes and the fmula for tax incentives for preserving historic structures. Much of what -- that's what was in the originally posted version. That is also the version that I have here in email that mandy dealy and lynn team had also signed off on, and that phrase has now been substituted and green version to include what that means. And so I mean, the fiscal impact that you're talking about I think was included -- I mean, that seems even more complicated to me, formula for tax incentives, what is the formula? It's these same things that you're talking about.

Morrison: mayor? council member morrison. if you are suggesting that you want to give direction that this phrase that says any other aspects of the historic property identification and designation process -- if you're suggesting that that specifically should mean the formula for tax incentives for preserving historic structures, then I think that we're on the same page because what I'm -- what i see when I read the language that's in there now is that it says let's talk about whether there should actually be 17 criteria that it has to qualify for and whether or not community value can be considered. That's what it sounds like to me that all that's being opened up for discussion. council member shade. and after hearing the discussion today I'm comfortable with the new -- that includes new discussion and feedback on those items. So I'm willing to look at broader than just the tax -- let me ask -- I asked the city attorney this question a few minutes ago and maybe she'll back me up on it, but i don't think the resolution in any way would restrict the historic landmark commission or the planning commission or the codes and ordinances or anybody

else from examining other aspects, just because you don't have that phrase in the resolution itself doesn't mean they're not going to do it. They can do it and I think they will do it.

If I may, I'll lay out the process real quick for those in the room. If this resolution were to pass the council, the next step would be the staff would do some necessary research on the staff level as directed by the resolution. We would then take the ymg to the operations subcommittee, the historic landmark commission for their review. We would take it to the full historic commission for their review. Wiends take it to the codes and ordinances subcommittee, and then to the full planning commission and finally back to the council and it would be an opportunity for the public to address the issue at any one of those meetings. and they could add to or subtract from or change any or all.

Correct. during that process.

Mayor? council member spelman. jerry, you said a long chain of events. We want to make sure we're on the same page here. Were we get through that long chain between now and august 5 and come back to the city council on august 5.

Sure, because the way i read the resolution it kind of cuts the two tasks in two different time frames. One is the task of limiting the number of cases that are in any given landmark commission, and you're asking to have that back by august 5, we can certainly do that. It will be quickly done, but we can certainly done. The larger question about looking at the cap and the program as a whole and the economic analysis, et cetera, the resolution gives us till december 31, and again we can work within that time frame.

Spelman: thank you. Mayor, I also have one suggestion, if I might. I have a formal amendment -- like a friendly amendment? I'm not sure which motion is on the table right now. we will vote on the substitute motion first, which is what is contained on the green sheet.

Spelman: okay. If that's the case, then i would suggest, having heard dealy's extremely useful comment, I would like to add the following language to second-to-last page, be it further resolved that the city manager directs to, colon, I would like to add the language, one, examine historic landmark preservation practices in cities and identify best practices for identifying, designating and ensuring the preservation of historic properties, semicolon. I think that incorporates dealy's comment -- i suspect, jerry, you and steve are going to do this anyway, but directs you to do what I suspect you were going to do, which is to ensure that we're on -- we understand what peer cities are already doing to what we're trying to do here. is that acceptable to the maker?

Yes. and the second? I support that and think it's a great suggestion.

Mayor leffingwell: second? Second also accepts that? You furnish the written language to the clerk?

Spelman: yes. all right. So any other comments? As I said, we will vote on the substitute motion first.

Mayor? mayor pro tem. just real quick. I realize that this is a very important issue, and so, you know, I understand that we may not be achieving everything that everyone wants on one side, and we certainly aren't making it easier for folks to achieve historical designation, which I don't think is the goal of the heritage society. The goal is to preserve our heritage. But I can see where the concern should come from because the bar is more than likely going to be raised. But this is an important issue, and it is something that we have to address, so it's a start. This is not the end. I believe that this conversation and the folks that have spoken about it will continue to have that conversation. So here we have an opportunity to actually improve the process. I don't know that in the end everyone will be happy with it. More than likely not. But I firmly believe that this council will make our decisions based on not only the value of the preservation but the value of the community, a community that is facing very difficult decisions moving forward with potential \$28 million shortfall in our budget. And so we make these decisions all the time. You know, which fire stations do you close? Which cadet -- police cadet classes do you push off or not? They're not easy decisions but I'm confident this council is headed in the right direction, and that we have a well-balanced council to have full conversations about what it is -- where it is we want to land on a policy regarding historic preservation. So I want to thank my colleagues. I want to thank council member morrison for continuing her role as a strong advocate for historic preservation. I think that's going to help us make the best decision possibly. So obviously I will be supporting the substitute motion. more comments? All in favor of the substitute motion say aye.

Aye.

Mayor leffingwell: aye. Opposed say no?

No. so i believe that passed on a 5-2 with a no vote by council cole and morrison. Ms. dealy, we have voted.

Yes, sir. it's over and done with. Go ahead and ask your question.

I wanted -- this is fine. The way the resolution was written, the first two directions to the city manager will come back to the historic landmark commission and the planning commission, but the part that's under "be it further resolved" does not instruct that the recommendations go to the planning commission again, and so I just wanted to make sure that the -- i believe it's implicit, the entire new ordinance, once it starts the process, will go through the subcommittee and the historic landmark commission, the landmark commission and the subcommittee of the planning commission, planning commission and then council.

Okay. Throug throug hout the entire --

well, it looked pretty clear to me that only part of it was going to do that, so I just wanted to clarify that. we got the people behind you --

that is a requirement of the code. We will take it to --

mayor leffingwell: yes.

Okay. Thank you. All right. Council I, I believe that brings us to our 2:00 zoning cases.

Hello, mayor and council. My name is greg guernsey. I'll go through the zoning ordinances and restrictive covenants. These hearings are closed. 50, case c14-2009-0102 part, this is in the upper boggy creek planning area, vertical mixed use opt-in/opt-out. Tract 3. This will be a discussion item. zoning and neighborhood plan amendment, public hearings and possible action, these are the public hearings -- the public hearings are open. 51 is a discussion item, which is related to item no. 50. 03 part for tract 3. Again, this is related to the upper boggy creek vertical mixed use neighborhood plan amendments for that same property. That's discussion. 52 is related to the item no. 60. This is known as case c14-2009-0089, for the indian hills property. That will be a discussion item. The first item I can offer for consent is item no. 53. This is case c14-2009-0159 for the property located at 2807 del curto road. We have a postponement request on this item by the owner to 6/24. 54, case c14-2010-0035. Now this is for the property located at 1800 nueces. Scott sayers, the applicant for this case, has requested postponement. Still talking with the neighborhood, and this would be only a postponement request to your next meeting of the 24th. 55 is case c14-2010-0017 for the great hills country club on 5914 lost horizon drive. larry harper, who's the agent for the -- or actually the applicant for this case, has received some counteroffer that they are considering from the neighborhoods, and also are still negotiating with individual petitioners on this case, and they have requested a postponement of this item to june 24. 57 are related cases. 01 for the property located at 1307 newning avenue. This is regarding the greater south river city combined neighborhood planning area, neighborhood plan amendment and the 57, case c14-2010-0039 for that same property at 1307 newning avenue, which is a rezoning case. The applicant has requested both items 56 and 57, a postponement of this item. I believe this is their first request to -- june 24 meeting. 59 are related items. 58 is case 166 rca, for the property located at 8401 southwest parkway known as the sunset ridge property. This is to amend a portion of a restrictive covenant that relates to certain uses and development standards. The planning commission unanimously recommended this change to the restrictive covenant as it relates to certain uses and development standards, so that's offered for consent approval. 59, case c14-2010 hft 0042, the property located at 8401 southwest parkway. This is a rezoning request to general office, neighborhood plan or gonp combining district zoning. The planning commission recommendation was to grant cogo, conditional over, neighborhood planning combining district zoning and they also recommended this item unanimously for consent approval, and this is ready for all three readings. 60, case c814-2009-0094, this is for various properties at fm 973 and nez perce trace and taylor lane. This is a discussion item. As I mentioned before, this is somewhat related to item no. 52. 61, 62 and 63 are related items and all are being postponements requested by staff to the july 29 agenda. 61 is case np-2010-0027 for the central west austin combined neighborhood plan. 62 is case c14-2010-0051, the windsor road neighborhood plan area 63 is case c14-2010-0052, the west austin neighborhood group planning area rezonings. So items 61, 62 and 63, staff is requesting a postponement of all three of these items to your july 29 meeting. And that concludes the items I could offer for consent at this time. so, council, the consent agenda, this will be for items where a public hearing has not yet been held, will be to 53 until june 24, postpone item no. 54 Till june 24, postpone 55 till june 24, likewise until june 24 items 56 and 57, to approve the amendment on consent in item 58, to approve -- to close the public hearing on 58 also, and to close the public hearing and approve on all three readings item 59, and to postpone 61, 62, 63. So that's the consent agenda. Motion for approval?

So move. council member spelman moves to approve the consent agenda, second by council member morrison. Any discussion? All in favor say aye.

Aye.

Mayor leffingwell: aye. Any opposed say no. Passes on a vote of 7-0.

Thank you, mayor and council. At this time we'll offer items 50 and 51, george adams is the director of planning development review will present these two cases.

Good afternoon, council. guernsey mentioned, items 50 and 51 are related. Item 50 is zoning case c14-2009-0102, upper boggy creek neighborhood planning area, vmu opt-in/opt-out application for tract 3. 03, upper boggy creek vmu neighborhood plan amendment for tract 3. Council, on march 11 the council approved all three readings of an ordinance covering the majority of the vmu properties within the upper boggy creek neighborhood planning area and approved first reading of an ordinance to exclude tracts 3, 11, 13, 15, 17, 19, 21 and 22 from the vmu overlay district. On may 13 council approved second and third readings of an ordinance to exclude tracts 11, 13, 15, 17, 19, 21 and 22 from the overlay district, and postponed action on tract 3 at staff's request. Just as a reminder regarding tract 3, the upper boggy creek neighborhood planning contact team and the planning commission both recommended to apply all vmu-related standards, this includes dimensional standards, parking reduction and additional uses and office districts to tract 3. They also recommended requiring affordability level of 60% of median family income for affordable rental units and any vmu buildings constructed. The adjacent property owners to the west of the property support the exclusion of tract 3 from the vmu overlay district, and finally the owner of tract 3 has filed a valid petition in opposition to excluding the property from the vmu overlay district. So today there are two alternatives before the council. The first is to approve the exclusion of tract 3 from the overlay district on second reading. The second is to approve planning commission recommendation on second reading. If the council chooses to take this action, staff would also request the approval of item 51 on first reading, and that is the neighborhood plan amendment that would amend the upper boggy creek future land use map from office to mixed use office for tract 3. That concludes my presentation. I'd be glad to answer any questions. Questi questi ons? All right. Public hearing has already been closed on this item, no. 50.

That's correct. are we addressing 51 at the same time?

The -- I would say it depends on the council actions. If the council wants to follow up with second reading to exclude the tract, then the need for item 51 goes away. If the council is moving -- let's address item no. 50 then. Discussion, council, or a motion? Council member morrison? I will jump in and make a motion. As I recall, this is a case where several years ago the property was rezoned to office, and there was a lot of -- there was discussion with the neighbors at that time and the way that they could agree to it would be if there was assurance that there wouldn't be any residential on the property, which was very important to them, so a restrictive covenant was put on the property and there can be no residential on it. So they are - continue to be in opposition to residential, and I think in fairness to those folks who supported the office zoning in the first place, based on that foundation that it's important that we stick with what the agreement

that was made with the residents, so I would like to make the motion that we exclude tract 3 from vmu. council member morrison moves to exclude tract 3 from the vmu overlay district. Is that on second -- on second and third?

We're requesting second. Reminder regarding tract 3, the upper boggy creek neighborhood planning contact team and the planning commission both recommended to apply all vmu-related standards, this includes dimensional standards, parking reduction and additional uses and office districts to tract 3. They also recommended requiring affordability level of 60% of median family income for affordable rental units and any vmu buildings constructed. The adjacent property owners to the west of the property support the exclusion of tract 3 from the vmu overlay district, and finally the owner of tract 3 has filed a valid petition in opposition to excluding the property from the vmu overlay district. So today there are two alternatives before the council. The first is to approve the exclusion of tract 3 from the overlay district on second reading. The second is to approve planning commission recommendation on second reading. If the council chooses to take this action, staff would also request the approval of item 51 on first reading, and that is the neighborhood plan amendment that would amend the upper boggy creek future land use map from office to mixed use office for tract 3. That concludes my presentation. I'd be glad to answer any questions. Questions? All right. Public hearing has already been closed on this item, no. 50.

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We're requesting second. We don't have an ordinance ready at this time.

Mayor leffingwell: okay. Is there a second for that tion? Second for that motion? I'll second that motion. Discussion? Council member riley.

Riley: I have a question. George, could you go over -- I understand the neighborhood plan contact team -- could you state the position of the contact team on this?

The contact team supported applying all the vmu standards to this tract, and it was -- it was already in the overlay district as a result of the creation of the overlay district, so the contact team has supported kind of

fully entitling with the incentives for vmu. mayor, if I may, I'll just say that I'm not going to be able to support the motion, the neighborhood around there is supportive including -- including this tract within vmu overlay, and I would support the neighborhood. say that again, I couldn't hear you. the neighborhood plan contact team supports including this tract within the vmu overlay, and I would support the neighborhood on that, so I'm not going to support the motion. council council member cole? mayor, I guess i have to ask george a couple of questions, because as i remember the situation last time, we had - the owner had a valid petition, and we had the neighborhood that the property was located in that did not want the vmu status but the neighborhood that was adjacent did want the vmu status. Am I remembering that right or that's opposite?

That's essentially correct. The -- the contact team -- the way the ordinance reads is if a contact team exists, then they are the responsible body for putting together the recommendations on it regarding vmu. So that team supported vmu on this property. The immediate neighbors who surround it oppose the vmu provisions. in light of the fact that the immediate neighbors oppose the vmu status, I also will not be supporting the motion, and if I remember right, this -- this is the cherrywood neighborhood. council member cole?

Cole: oh, I'm sorry. did you say -- you said you wouldn't be supporting it because the neighborhood oppose vmu. That's what the motion is, to exclude vmu. I know -- that riley messed me up.

The way -- mayor? council member cole has the floor.

Cole: thank you, mayor. I concede, I will be supporting the motion because I -- mayor pro tem? well, I just -- I want to reemphasize the point that council member riley made that the neighborhood contact team that represents the neighborhood supports the vmu. It's just the immediate adjacent neighbors, which we see in many vmu cases throughout austin. When you live behind the property that potentially is going to go to vmu, obviously you have concerns, and we've done a lot to address as many of those concerns, you know, on a case-by-case basis. So because the contact team supports the vmu and because that is in line with our values on core transit corridors and future core transit corridors, I won't be supporting the motion made by council member morrison and yourself.

Mayor? council member riley. if I could just add one comment to the mayor pro tem's remarks. We are talking about a corridor where a lot of folks have expressed interest in mixed use and adding destinations that will make it more walkable and inviting, and it's in that same spirit that the contact team has chosen to support vmu in this location, and so out of respect for all the neighbors up and down this corridor, I would encourage the support of the neighborhood plan contact team on including this site within vmu. well, let me just say, I seconded the motion. I'm going to support it for a couple of reasons. First of all, although the public hearing has been closed, there were a number of people in the -- neighbors in the immediate vicinity who had major concerns about this, and it actually was approved -- the same motion was approved last time on a vote of 5-1 with one abstention. But moreover, I've been increasingly troubled by what I consider to be a flawed vmu ordinance in that a property is automatically assumed to be vmu once it gets involved in this process, and it automatically requires a super-majority to not designate. It should be a simple majority vote like any other zoning change, but this process somehow

declares it to be vmu unless a super-majority overturns it. i think it's a flaw in the ordinance. That's the primary reason I'm going to vote against it. -- I mean, I'm going to vote for the motion to exclude it. Council member morrison? I just want to make one other point. The point was brought up that there have been concerns by many folks about having vmu adjacent to their property, and I do think that we've taken those concerns into account in those cases, you know, and, in fact, deferring some of the vmu until we get neighborhood site design standards, which I believe adams is going to start a discussion this summer about that, because it really can be a significant impact. It's asking a lot. It's not just -- as i understand it, it's not just a couple of neighbors that are adjacent. It's quite a wide swath of the folks nearby, and that this is -- is this actually cherrywood or is it delwood? Shaker place? Okay. As opposed -- and it's the upper boggy creek neighborhood plan team. So they're really on the edge of that neighborhood contact team. So that's why I made the motion. council member riley? one last question of staff, and george, I know you mentioned the super-majority requirements that apply to this case, but since it is kind of complicated, could you just go over that one more time?

Well, for second reading it's simple four votes. At third reading, if the direction is still to exclude, then at that point we would need the super-majority. maybe I should ask it this way. You mentioned a valid petition, and could you explain the valid petition in the context of the posture we're in right now?

The owner of tract 3 has filed a valid petition in opposition to being pulled out of the overlay district, and that's what -- so to be clear, supporting this motion means -- requires overriding the valid position?

That's right, as third reading that will be the case.

Riley: okay. Thanks.

Cole: mayor? council member cole. and to be doubly clear, george, that would require only two votes; is that correct, when all seven are here?

Right.

Cole: okay. further discussion? Council member spelman, there is a motion on the table and I don't know if you're aware of it. remind me if you could.

Mayor leffingwell: pardon? remind me if you could. the motion is, if you look at your motion sheet, it's the first motion to amend the vmu overlay district to exclude tract 3. It's the same thing we did on first reading. This is second reading only. Okay. So the motion is to close the public hearing and approve -- and approve on second reading only a motion to exclude tract 3 from vmu overlay district. All in favor of the motion say aye.

Aye.

Mayor Jeffingwell: aye. Opposed say no. Motion passes on second reading only on a vote of 4-3 with council member shade, mayor pro tem martinez and council member riley voting no. So where does that take us, rusthoven?

I believe that takes us to whisper valley and --

jerry rusthoven, planning and development review, c14-2009 009, indian hills located along fm 973, requested zoning is from unzoned, p public and dr development reserve, to mf multifamily medium density and li conditional overlay. Related case item 60 is ca 14, 0094, the whisper valley, located at 9605 and 9001, taylor lane, 8312 and 9015 taylor lane. The request is from unzoned to pud or planned unit development. The applicant in both case development is proposing a pid, or public improvement district, as a means of financing the infrastructure and parkland within this project. In 2008 the council adopted by resolution a policy regarding pids. One of the requirements is for the council adoption of a pid is approval of a planned unit development or pud. In may of 2009 council approved the development agreement with torres laying the outline for the pid and pud for the whisper valley property and agreeing to limited purpose annexation and defer of full-purpose annexation. Before you today is the first reading of both the indian hills and whisper valley cases. In the future we will be having public hearings on the annexation and the pid as well as a briefing on the pid, as well as second and third readings of these two zoning cases. Our desire is to finish these two cases before the end of august. The indian hills property is 240 acres that is requesting standard li-co and mf-3 zoning. This case has been recommended by the zap and is included by the pid because it is included as a means of getting the water infrastructure to the larger whisper valley project. So therefore both staff and zap recommend that project pursuant to the terms in the tia memo. The larger whisper valley is a 2,000-acre tract located near the future extension of braker lane. The proposal is for mixed use development that contains a mixture of commercial, multifamily, residential uses, as shown on the site plan. -- I'm sorry, shown on the land plan. The staff is recommending approval of the planned unit development because it complies with tiers 1, 2 and 3 of the pud ordinance. The development will have over 35% open space, for a total of 700 acres, including 600 acres that will be used for greenbelt in the creek -- along the banks of gilleland creek. The applicant has agreed to protect the head waters of the adjoining tribute terry according to code, agreed to construct water quality ponds to a standard greater required by the code, to comply with two-star green builder, road green and ipm programs. The development will also propose alternative street development standards so will encourage traffic calming, walkability and pedestrian access. The applicant will donate land for a city fire station, and reserve property for a school site, possible library site and park and rides for capital metro. For affordability the applicant is proposing a set aside of 10% of the units and 80 for owner occupied structures and 10% at 60% median family income for rental structures. The case does have the recommendation for approval by the zoning and platting commission, the environmental board and a briefing was given to the design commission regarding this case. If I could grab one more piece of paper I'll read you the more detailed recommendation of the zoning and platting commission. The zoning and platting commission recommended approval of whisper valley, that any two lanes be contiguous throughout the pud, the right-of-way be set aside in at least two places on the northern line, to allow for connectivity, two places set aside for bus pull-outs, any, any -- it would come to the zoning and platting commission, the greenbuilding requirements that the developer has agreed to would not be locked into place for the green builder standards today, rather they would be the green builder standards

recommended from time to time as the project is built out. And any street sections where they do not use their proposed alternative compliance, where they are including bike lanes, that if they chose indeed to use standard city cross sections, that they would include bike lanes in those streets. So with that I'm available for any questions and I know the applicant has a powerpoint presentation. Questi questi ons? Okay. We'll hear from the applicant. You have five minutes. And you do have some people donating time to you, michele rogerson. Genilee meade. There she is. Okay. So technically you have 11 minutes.

Thank you, mayor, council members. I'll try to be briefer than that. As -- staff covered a lot of the things that highlight these projects, but let me take a -- let me take you back to sort of why we ended up here. Back in 2007 the city tried to pass some legislation that would allow the creation of infrastructure and land use controls on this sh-130 corridor, and that's the biggest challenge with the sh-130 corridor. The sh-130 corridor is a preferred growth area, but it has a lack of infrastructure and most of it is in austin dj. Limited land use control. The legislation unfortunately did not pass. We were supportive of it and after that we spent a lot of time with staff and management trying to come up with a way to accomplish what that legislation would have -- would have accomplished. And so basically the structure we've come up with and was approved in a development agreement that you passed in june of 2009 is the pjecte limited purpose annexed, which would allow land use controls for the city. Then that allows the city to have the zoning for the land use controls and then creation of a district. So it would accomplish what the 2007 legislation would have, which is to give the city land use controls over an area it doesn't and also allow for funding of infrastructure, which both of these projects will end up building a lot of infrastructure that provides infrastructure not just for these projects but for the corridor in general. I think staff ran through these actions taken to date. Again, we've been through zoning and platting commission, environmental board, travis county commissioners court, design commission, and at all these -- all these stops the project has been approved unanimously. First let me start with whisper valley. Whisper valley is a 2,000-acre project. It will be a mix of residential and commercial. About 5,000 single-family homes, 2600 multi-family units, 2 million square feet of retail and commercial, and probably most importantly about 700 acres of parkland and open space. Now, this is not all happening at once. It's going to take 15 or 20 years to build out all these improvements, and we envision various phases, but that would be the ultimate build-out. I'll hit the superiority items on the pud really quick. Again, vast amounts of open space, trail system. If you'd look at this, this -- this highlights to you how much land area that signature park really is. It's 600-acres, which is approximately the size of zilker, so it's a very large park. The park will be a city park, but in the early years due to lack of funds, you know, to maintain parks right now, it will be licensed back to the developer. The developer will maintain the park in the early years, and then when the city full purposes the area around it, then the -- then the park will become a city parkas well. But during the early years the developer will operate and maintain the park with a license agreement with the parks department. Also, staff mentioned we are reserving land for civic uses, schools, fire station, libraries. This concept plan will show you and highlight to you where those potential locations are. Again, one fire station site, two school sites, a library site and park and ride sites. Some of those are shown in the alternative on this map, but it's ultimately specific uses that will be there. Environmental features from the very beginning this project has focused on environmental and was built around the idea of build er the environmental nature of the land, especially gilleland creek, and so that was how the project had -- was designed from the very beginning. And so again, venture environmental board, the environmental board unanimously approved the project. We're doing two-star green builder, pro green program, increased water quality systems, tree

preservation, minimizing our floodplain modifications. Some of the other projects that have come through and tried to develop this corridor have focused more in floodplain modifications that would have changed the topography and the layout of the land. We tried to build around the land. And probably most importantly we're preserving the tributaries that feed into Gilleland Creek. In this watershed only those tributaries that drain more than 320 acres are required to be protected. This map highlights in the yellow and blue those tributaries that are less than 320 that we're protecting. Some of them are actually less than 64 acres. Alternative roadway standards were mentioned. We went through commissioners court because these will be county roadways, so we've tried to design streets with more of an urban roadway design, including bike lanes, and this map will highlight for you that arterials and our collectors will all have bike lanes. We have agreements in the PUD to have shower facilities for the commercial locations. We did not include bike lanes on the smaller neighborhood streets because the design speeds on those streets are such that you can ride bikes safely on them and we have a trail system also that will connect into -- and provide for bike. Affordable house, 10% at 60% for the rental. 10% At 80% for ownership. Community benefits from this project, again, real quick, land use controls no. 1. I mean, there are no land use controls out in this area. I mean, at this point without annexation and zoning you can -- you know, there's no control on what the actual use of the land is. The project meets the spirit of the Travis County conservation ordinance in the green print. There's lots of parkland, affordable housing. And then finally, and I think you're going to have some neighbors talk to you about this in just a few minutes, but a per lot contribution to the roadway network. And what typically happens in -- when you bring a zoning case in is you have a TIA, and that TIA ends up having you fund various intersection improvements through a fiscal posting. The problem in this road shed, and a lot of road sheds right now, is that the -- they're not -- they're not funds to actually build the roads, not just the intersection improvements but the formerly -- the roads that used to be funded by Campo, they're not going to fund them. So what we are proposing is a system where the developer and surrounding developers would put money on a lot basis into a fund that would go into the same fund that governmental agencies put their money into, and that money then would be funneled to the most important road projects. So the road projects with the highest priority would be the ones that get that funding, instead of scattering intersection improvements that may or may not get built. And here is a map, real briefly, that highlights some of the roads that are contemplated in the Campo plan for this road shed. I'll hit Indian Hills real briefly. Indian Hills is a smaller development. It is -- it is going to be mostly apartment units and some commercial. We're asking for straight zoning on that, MF-3 and LI. We have a long list of prohibited uses for the LI. Again, community benefits, land use controls, same kind of environmental features, two-star green builder, grow green program, integrated pest management, same affordable housing levels, also constructing lots of infrastructure and the same per lot contribution to the roadway network. Also, this will highlight for you the amount of infrastructure really being brought by these two projects. What you see on this map is over 12 miles of water lines, and here at about -- the wastewater being brought to the project, you're talking about three or four miles of wastewater, you're talking about wastewater treatment plants, so there's lots of infrastructure that's going to be funded through the PID process on these two projects that provide infrastructure for the whole corridor as well. Quickly, I know we're not talking about the public improvement districts tonight. This is just on the zoning, but again PIDs are connected to this. This is all part of the process. The PIDs will be secured by bond -- the PIDs are -- issue bonds secured by assessments on the land. There will be multiple phases of the bonds. Each phase will have its own separate bond issuance, and the key to the PID, to keep in mind, are that they're referred by the city council, no -- referred by the city council, no additional subdivisions are

created, it doesn't affect the city's tax base -- doesn't come out of the city's tax base. The funds come just from the district. The it doesn't affect the city's credit or the city's bonding capacity and and basically it is a district that doesn't -- it's not a district. It's just a funding mechanism controlled by city council. And I'll be happy to answer any questions you guys have. I think I'll also respond to any questions after the neighbors speak to you. Questions? Council member morrison. metcalf, we had an opportunity to talk a little bit about parkland and your plans for 100 acres be scattered throughout the area. And one of the things that i have brought up was a concern that we have some mechanism to ensure that the parkland that's scattered throughout is actually of a usable size, because we -- that's sort of a lesson learned that we had from a previous -- a previous project that in the end, even though a certain acreage has been committed to, you couldn't really go and find all that acreage and add it up. So we -- I wanted to -- we haven't really had a chance to hash through that, but i just wanted to ask you about your willingness to talk even after first reading, of course, about coming up with some definition to ensure that we get the usable parkland that we're sort of expecting.

Absolutely. And probably the smallest piece of the parkland will be this kind of concept of a common green, where you have houses that will actually front on parkland, where their front doors will actually go on to a common green. And, you know, I think those may be as small as a third of an acre, but yeah, we can definitely work with -- to make sure we're not giving you landscape medians and calling them parkland. sleaze so list from the parks department came up with some language so maybe you can sit down with him and get language for a second reading.

Absolutely. more questions? Our next speaker for allen davidson? You have three minutes.

I want to thank you for coming down here again today for what must be the most monotonous listening on the planet. My heart goes out to you and your families for putting up with being city council members and mayor and mayor pro tem. I am allen dave davis. I'm the sect of the park springs neighborhood association. And -- secretary. And we live in east travis county and we see how the traffic works and we're trying to get to work on time to two-lane roads that crumble. We've been talking with developers and we've been hanging out in city hall here trying to make the work go faster, hopefully to avoid a traffic disaster in our area. We know that on the southwest side of town, southwest parkway was all completed before the houses came in out there to ensure that there weren't going to be traffic disasters, and we know that we don't have that kind of a tax base out there to make that much noise. I'm sure there were some perks that came along with the development that happened out there. So we've been meeting with the developers, and we've been meeting with campo and the city of manor and -- to try to get a larger picture of what it's going to look like out there in 20 years, and we not only these developments but other developments, and we really do have just little farm roads that are crumbling out there right now. That's not going to work. So we have insisted as a neighborhood association we -- we continue to stress the point that we'd like to have infrastructure improvements if not as -- if not before the houses go in, that as the houses are being built to supply the needs of the area out there. And so we're just -- really, I guess all we're asking for you today is to continue to have whispering valley -- these have been great people to work with as far as developers go, but we would like you to continue to see to it that these drawings on paper and these great -- they are fantastic ideas, that those come about as they're being presented to us now. Thank you. thank you. And council, we're going to have to table this item until after live music and

proclamations. We have several more speakers who are all signed in neutral, and then a rebuttal to their neutrality by the applicant, and then we'll have some council discussion on that. So without objection we'll do that. Before we go on break I want to recognize boy scout troop 20 from the bethany lutheran church. Would you stand up please? we want to thank you for coming. thank you. I think you get a merit badge for this, and you sure deserve it, believe me. And I got a question -- one quick question of staff before we go on break. We got item 51, I believe, hanging, which I believe probably want to postpone.

Yes, mayor, you can 51 to your next meeting, and then we would ask that you instruct 50 so you can consider both of those at your next meeting.

Mayor leffingwell: right. Well, you're going to do that anyway, so could I just have a motion to postpone 51 till june 4? Moved by the mayor pro tem, seconded by council member cole. Discussion, all in favor say aye.

Aye.

Mayor leffingwell: aye. Any opposed say no? Passes on a 7-0 vote, and it will be brought back with item no. 50 on june 24. And with that we stand in recess for live music and proclamations.

Joining us today is double portion. These energetic twins have spent the past 25 years performing their dynamic form of gospel music for audiences young and old. Double portion combines traditional with contemporary sound to produce r and b and hip-hop beat with powerful messages. This year the twins perform "south by southwest" music festival and released their single, i am somebody, and debuted their nationwide music video on dbt and imo bobby jones gospel. They strive to impact youth through motivational speeches. You can catch them at the grove at the park on june 27. Please welcome double portion.

cole: great job. Great job. Well, guys, come on over here. I have to ask you a couple of questions. Do you have a web site?

Yes, we do.

Why don't you tell everybody about that. .d portion.com, and you can also go to our youth conference web site. It's hero project youth.com.

Where can we purchase your music?

You can always go to our com or go to I tunes and you can buy it for 99 cents.

Assuming we can't make the grove at southpark meadow where is the next play --

we are a lot of different places. Coming -- on tomorrow we are performing on 11th -- where are we performing? Around the city -- I know on the 19th we'll at the round rock june tent festival and san antonio

youth juneteenth festival. Both of those places. We're going to celebrate the lord so we're excited about that.

I guess the lord doesn't have to be in the city of austin. If -- you can get back to me in the city of austin. I'm just teasing you. Let me read the proclamation. Be it known that whereas the city of austin, texas is blessed with many creative musicians whose talent extends to virtually every musical genre and whereas our music scene thrives because austin audience support this music produced by legends, our local favorites and newcomers alike, and whereas we are pleased to showcase and support our local artists. Now, therefore, I lee leffingwell, mayor of the live music capital, do hereby proclaim june 10 at double portion day. do you want to recognize anybody? thought of you who hadn't heard we have a very big event coming up at the end of june, classical music festival, classical guitar music festival, and I'm actually going to be there, and no, I'm not going to be playing the guitar. I'm going to be there welcoming some of the best guitar players in the world, including peppy romero will be there, and matt hensley here also. Right?

Yes. and my FRIEND JOHN henry McDonald and his wife former council member epstein are going to be there, so we'll all have a good time at the long center on june 26, and so appropriately we have a proclamation to celebrate this occasion, which reads, be known that whereas further diversifying austin's music landscape, the austin goes classical music festival, including the world's most prestigious international classical guitar competition will be featured at the long center this month, and whereas more than 60 events, including headliners like the legendary peppy romero, the grammy award winning I.a. Guitar quartet and our own austin symphony orchestra, a flamingo show and the biscuit brothers are included in the six days of this festival, and whereas our numerous education opportunities, a youth festival, and an evening reception round out the planned activities. Now, therefore, I lee leffingwell, mayor of the city of austin, texas, do hereby proclaim june 22 through the 27th, 2010 as austin goes classical days in austin, texas. So congratulations, matt. This is all yours.

thank you. would you like to say a quick word?

Thank you, mayor leffingwell. It's an honor to be here and a honor to receive this proclamation. We're extremely excited. We can't believe there's only 11 days left before austin goes classical. Mayor leffingwell said just about all of it. 60 Events in 6 days, we've brought together 12 different partners to the performing arts, long center, austin symphony orchestra, zachary scott theater, the string quartet and many more. We have some of the greatest guitarists in the world and a lot of austin elements as well, about a thousand guests are coming in from around the world, contestants in the competition are from 25 countries. We have divisions from 14 and under, 15 to 18 and then the big kids division as well. Ut chancellor, francisco, is going to introduce opening night with peppy romero. Broadcast live by kmfa. Klru is doing a documentary released internationally in august on the festival as well, and we also have the alamo draft house coming out and setting up rolling road show on the city terrace for free and showing of a classic 1996, guitar movie crossroads with the comedy troop. Bluebell ice cream will be there and many more. Please join us in about 12 days. It's an honor to be here. Thank you, mayor leffingwell, for this proclamation and please come and see us. I'll place a little stack of postcards on the table if anybody would like some more information.

Thank you. we're going to award some certificates for partners in the mayor's fitness council, for those of you who didn't know the mayor's fitness council has been around several years ago, actually started by my predecessor, mayor will wynn, who declared austin -- austin fitness to be one of his three primary goals. So he established the council, and they worked under the auspices of the mayor's office for several years but now they've gone profit on us, but we're still affiliated with them and they still have the same name and I think, lou -- i think I'm on the board of directors of something --

whether you like it or not. so I think before we hand out the certificates I'm going to let lou, who is really the driving force behind the fitness council say just a few words about it.

Thank you, mayor leffingwell. Well, as the mayor said, we've been around for a while, but we're really, i think, starting to get in the stride, and we're just really excited about our six new partners. We really released this program generally about a year ago after we finished the pilot, and we really -- starting to get some momentum. With these partners there are be 26 new partners in the city, but that represents between 20 and 30 employees across the austin community and there are others waiting in the wings to get certified as fast as we can review their applications. So we're very excited and we're very appreciative of the work that these companies have done to adopt the programs that we put out there and also I want to thank all the council members, and let me just ask before we do the awards, can I have all the council members that are here just to stand for a second so we can recognize you? We only have a couple, but i want to thank them for -- thank you very much. So thank you to all those who are participating. thanks, lou. I have some of these certificates to hand out, and -- I guess everybody is up here. I will -- looks like they're exactly the same, so you don't want me to read them all, do you? I'll just read one. This one is to samsung, austin semiconductor, and it your business is a role model for others because of the support you have given your employees by promoting healthy life-styles. The mayor of austin and the mayor's fitness council congratulates you on your efforts thus far and encourage your continued involvement in promoting good health through approved nutrition and physical activity. This certificate is presented in recognition thereof this 10th day of june, 2010, and it's signed by myself and by lou earl. This is for samsung. Who's accepting for samsung?

same partner certification is conferred upon simply fit meals. Simply fit meals. partner certification for brentwood christian school. partner certification for cap metro. Capital metropolitan transportation authority. I'm not too sure about this one. Partner certification is hereby conferred upon graves, dougherty herrin and , a bunch of lawyers. now, I know this guy has spent -- is spent because he's my workout partner. so congratulations to all these folks and the mayor's fitness council continues to do a great job fulfill our goal of keeping austin fit, and weird. I want you to know that was my mistake. This is not a trick. You do get extra attention this way. Partner certification hereby conferred upon richard p. Slaughter associates, inc. here is your opportunity to demonstrate your skill at public speaking. Who wants to start? One from each group.

Hi, I'm donna simmons. I'm director of human resources at capital metro and I would just like to say thank you, mayor leffingwell, for the honor of being made a partner in the mayor's fitness council. I did want to recognize a couple folks with me here today. Michael niron is service manager. Also known because of our father wellness because of his devotion to our program and making sure we get to continue it. I also

have a couple of employees with us who we consider sort of stars of our program. Both are bus operators, one who operates our metro access service and serves our disabled passengers. Radel login and also terry walker, who is a bus operator. Both have been involved in this program for a little while with us and have had some amazing success. Particularly I learned today that today is sherri's 22nd day of being smoke free with the help of our smoking cessation program. and radel I learned yesterday has had some great success reducing her body weight, also reducing her blood pressure by having a real commitment to working out very consistently in our fitness center. So we're very proud of our program and are very honored to be partners.

thank you. Simply fit meals.

All right, thank you mayor from having us on the council, as two active professionals my young business partner patrick and I being part of this couple makes sense, the value of the council and the goal that is the council are values we have in our personal lives and also core values of our business, selling healthy fresh meals we hope to be part council and continue to making austin the fittest city in the nation.

brentw brentw ood citizen school.

We are pleased to be part of this program. It is a wonderful way to set an example for our 750 students of what it means to be fit. It has been a lot of fun and a lot of competition among our faculty to see who would get the most exercise in and the most vegetables in and it's also been a response that we have a world-class runner on our faculty who has won the capital 10,000 in the past and he also wanted to get us to be more fit, too, so jacob, we did it, and we are excited to continue the program. I want to recognize terry hager who pushed us on to be on and the elementary principal who has been the fittest on the faculty, and it has been a great program for us and we thank you very much for inviting us to be part of it.

Mayor Leffingwell: Thank you. slaughter associates.

On behalf of richard p. Slaughter and associates, i would like to thank the fitness council and mayor leffingwell, we got involved because we are a small investment firm in austin. We have invested moneys in technology, we have invested in our subject matter the experts, our knowledge and understanding of what we do on a day-to-day basis and individual and small business owners we wanted to invest in ourselves again because we have been voted as small business -- number one small business according to the austin business journal, we want to invest in ourselves again in fitness. We have four people that are doing extreme type of fitness program, boot camp, we are now taking when we have time, we are taking staircase down, unfortunately security doesn't allow us to take it up, which I wouldn't want to do it on the five floors but we have every morning fresh foot as well as celery and carrots and so we are thinking the next lease when we sign at the end of the summer, we made sure the building we are in had a fitness center nearby and we were fortunate to have a fitness center in the basement of the building so we want to support austin of being the most fit city at the end of the year. Thank you.

Thank you and last but not least. Graze dorhty and moody.

Thank you, first and fore moat, let me thank mayor leffingwell who has set the bar high and continues to promote healthy lifestyle in austin texas. It is great for us to promote health and we appreciate your continuing support of that. There are so many little thing this is firm can do to make this a healthier place and ultimately save a lot of money, frankly. We have implemented fruit only as snacks available to clients and to our staff. We have done a ten-week workout program and had people participate and we did a biometric screening with our health insurance and we have done a wellness blog with e-mails, updates regularly on tips -- nutrition tips and other tips so those are some of the things. If anybody has interest in other items you can contact liz guernsey who did a great job and the great leadership of margaret karbohol who worked with us hard and to get us fit. Thank you very much margaret and thank you, mayor.

Mayor Leffingwell: Thank you all. we are out of recess and before we resume on items, i believe it is 51 and 62, i want to, without objection, withdraw items number 65 and 69. Withdrawn at the request of the applicant. Without objection, so ordered. Okay. So we will resume with our speakers -- we have three speakers signed up neutral. First is tom west. Tom west. And we are discussing both 52 and 62?

Yes, sir. Good evening. I am thomas west, president of the park springs neighborhood association. There are four of us here today because this is an item of much concern to us. Our association has been registered and recognized by the city of austin since 1998. By the way, I did forward to each of the councilmembers and the mayor pro tem's offices the copy of my remarks earlier, the e-mail tuesday which hopefully your staff has given you, so i will summarize those quickly and keep the process rolling. Our boundaries are us290 to the north and fm973 to the west. 969 On the south of the county line all the way out to the east. I am here to present our association's position as approved by our board and on both of these developments. Representatives in indian hills and whisper valleys have met with our neighborhood association several times and we do sincerely appreciate the willingness to keep us informed and to work with us. The psna does not oppose in any way indian hills and whisper valley developments. We do want to work with the developer and the government entities such as the city of austin. That's why we are here today. We've also been working with travis county, txdot, campo, we are very engaged in these issues. We are pleased, though, whisper valley which is asking for the hud development zoning seeks to be a superior to traditional development and have set out plans as such. As you know, eastern travis county has a history of being -- well, we would call it jumping ground for undesirable development and we welcome superior development in our area. Our concern of course is that indian hills and whisper valley will actually achieve the superiority they promised and we are looking forward to -- to continuing to play a role in monitoring that. Our position remains as stated, up to over a year ago, to the city council in letters. We support -- and they are we support the developments with the understanding that the city of austin will assure that the zoning provides for superior development and the development approval process provides for adequate area-wide roadway improvements to handle increased traffic. Major roadway improvements are imperative and our association really insists the adequate area-wide roadway infrastructure be in place as residents move in. If current regulations are inadequate then the city, the county and the state authorities need to devise new ones to assure that adequate area-wide roadway improvements are completed as development is completed. it is beeping, does that mean I've had it?

Mayor leffingwell: That's it, tom. Thank you very much.

Thank you.

Mayor leffingwell: Germane swenson. You have 3 minutes.

Hi, I am germane swinson part of park springs neighborhood association and I just want to -- I have an organic farm on blake manor road and am concerned about traffic because as it is, we just have two lane blacktop with no shoulders and we have very few linear miles of road for such a vast area of the county, and I just want to make sure that you understand our needs and that we could have really superior development and superior roads. That would be my dream and i know there is a money problem now with txdot and others, but other cities have thought of creative ways to finance road infrastructure and also create regulations that would ensure that roads be in place during or prior to houses on the ground so there wouldn't be any hugetraffic jabs and I am very pleased with the passenger rail that could be coming to manor because I think that could help out a lot and that southwest parkway, for instance, was mentioned earlier by allen, and i heard -- I don't know if this is true, but the money that was earmarked for the blake manor extension a long time ago, like over a decade ago actually went to build southwest parkway, and i don't know if that is true, but it would show that certain areas of the county are -- are getting adequate roadways even before they need them and I just want to ensure my part, also, gets adequate roadways so we don't have gridlock. Thank you. thank you. And the final speaker is john williams. Signed up neutral. And you have 3 minutes.

I am john. I am john williams. I also live in the neighborhood and am a board member of park springs neighborhood association. Thank you very much for your willingness to listen to us. I want to reinforce what the previous speakers have said and what I expect you already know, but I want to be sure that -- that you paid attention carefully to it because we feel it's important. Indian hills and whisper valley are very large, indeed huge. You recall the mueller airport redevelopment, that was 711-acres. Whisper valley alone is over 2,000-acres. The two combined are three times as large as mueller and mueller already had roads leading to and from it and public transrtation. Also, indian hills and whisper valley are located in the 130 toll road corridor but neither of them have direct access to the main lanes of 130, and that's what I want you to look at this map so I can show you. Every road abudding both of these properties is at best, a two-lane road with virtually no shoulders. Whisper valley here has absolutely no direct connection to 130. The new decker -- sorry, the new brakier lane which the developer will build will have a four-lane divided highway ending here at a two-lane no shoulder fm973. To get to sh130, you will have to turn left to come down to get on to the frontage road. Indian hills has a four-lane decker lake extension going east west. The eastern edge of that comes to a one-lane southbound only frontage road so that all traffic will have to -- that wants to get on to 130 has to come down all the way to the 969 traffic light, even if it's going to make a u-turn and go north on 130. Of course there is also no public transportation. The planning and zoning commission insisted that the there be bus pull-out lanes, but those buses are going to have to go to a two-lane roadway on 973 or taylor lane. It's essential for us that we have a regional traffic you found a creative way to fund water and wastewater treatments and we hope you will find the same creative way to fund traffic. Thank you. thank you.

And three minutes if you need it for the applicant.

Thank you. Let me just address briefly the traffic situation. Again, these projects are going to be built out over a long period of time. We are talking 10, 15, 20 years before they reach full build out. The initial phase for whisper valley, which will be built out probably somewhere between 2012 and 2014 so we have two years of water and wastewater infrastructure to build before we start putting houses on the ground. At that time there is 367 houses, so barely enough houses to generate a tia, so this project -- there are roads that need to be built in this area, but this project will be built in phases probably as the road structure comes in. Again, you are not talking about more than 2,000 trips until 2014 and then it is probably 2018 before you are seeing your next big wave of development. You are going to see single family development but the heavy traffic from commercial uses is going to take a long time to develop out. As far as 973 goes, here is a map that kind of highlights some of the proposed campo projects and expansion of 973 is one of the proposed projects. 973, Improvements to blake manor road, taylor, there is a bunch of roads on here on the campo plans to be improved. Again, if you look at what developers are typically required to do under austin ordinances as far as fiscal postings for traffic, you post fiscal for intersections and those intersections, in this case we studied probably between the two projects 25 intersections and we are posting fiscal, we would end up posting fiscal for 18 or 19 of them. That amount of fiscal posting is somewhere around \$700,000. The amount of money if we put in money towards this program, where we are putting it on a lot by lot basis and putting it into a fee pool that will direct it to the roadway themselves instead of scattered out to the various intersections, it will be 6 or 7x times -- 6 or 7 times that amount of money so the developer will be putting in a lot more money into roads than typically would be done and that's partially because of our discussions with the neighbors but a lot because we want to contribute to the roadway network and we would like to see the roads get built, too and it encourages the roads to get built when you do public private funding and there is some private, some public, it provides more funds to get these roads built. Also let me point out the developer is extending brakier through whisper valley and decker through indian hills so we are providing these two pieces of infrastructure up front and those will be built -- extension of brakier, the first two lanes have to be built with the first face of the project so we are -- phase of the project and so we will be providing money up front and infrastructure in the project as lots come in. thank you. Since we are going to be considering all of the discussion has been on items 52 and 60 which is indian hills and whisper valley pud, but they are different cases, all have different motions, so I have to ask you, it's the same folks that spoke are also signed up on 62. Do you have anything else you would like to add? Okay. So we have completed all of the speakers on both 52 and 60. Councilmember morrison.

Morrison: I don't know if this is for you metcalf but could you explain how the control of the road money is going to happen, what group actually has the authority to spend it and to decide what to spend it on?

Yes, I believe metcalf can address that.

It is an agreement for negotiating with travis county and the city and what is envisioned is there has been a group of all of the developers in the area, not just us but other developers, campo, the city of manor, city of austin, neighborhood groups, travis county, we have all been working on a prioritization of the roads in the area, and so there is still some discrepancy between everybody's list but we are trying to come up with a list that everybody can sign off on as to what roads get done first and then that will be

what governs the phasing agreement about the priority approach so it is a collaborative approach amongst governments -- the governmental agencies, the neighbors and the developers.

Morrison: Okay, but we can be assured that the money will be spent in the area that's going to be part of the final agreement. Is that correct?

That's absolutely -- the phasing agreement we will say it has to be spent on those roads because we don't want to put money in a fund that doesn't help the roads in our area.

Morrison: Right. Okay. The next question I had was on the amount. We probably can't really expect the developer contributions that are going to pay for all of those roads that are on the priority. So do we envision we will be able to use them to leverage state and federal funds or how will that work?

That will be the idea. The county will also issue more bonds. Most of these roads are state or county roads. There are -- when whisper valley and indian hills get limited purpose annexed, the roads still remain county roads and all of the surrounding network are in austin so they are county roads or state roads so most of the funding will come through either the state or through county bonds. I think austin has participated in some of those roads, for instance, austin is participating in decker, but most of the money is going to come from state or county.

Morrison: To me it is a nice creative way to be able to do this partnership. My only concern is an expectation that the roads are going to be built quickly. Nothing happens quickly when it comes to building roads and while I certainly understand the desire to make sure that the roads are there before the cars are there, I guess I feel a little hesitant saying -- you probably do, too -- can commit to that.

Which can put the money into the fund but we can't ensure that state roads get built. We have no control over that but we think it is more likely -- and this is what -- we have had this ongoing dialogue with the neighborhood for two years because this is their main concern -- we think it is more likely that state and county funds will be used towards roads where developers are participating in the cost as well.

Morrison: That certainly makes sense and the other thing you mentioned I think is important is that the amount that you are going to be contributing will be, I think you said 6-7 times what it would be if you were doing it in the traditional manner.

Under austin's fiscal posting, yes.

Morrison: Thank you.

Mayor Jefferingwell: Councilmember Riley.

Riley: I have a couple of questions about transit. You talked a lot about roads and it's about the object's access to transit. I heard mention of some pullouts or buses, so it is the expectation there might eventually be bus service to the area?

That would be the hope. There is currently no plans for bus service but on brakier, art tear I can't recall running through whisper valley, the zoning and planning commission asked that road be question sooned for pull off lanes for buses so it doesn't back up brakier and we are also providing a park and ride location should capitol metro decide to put one there.

And I noticed you are not that far from capitol's metro's llano line -- which would be the green line -- can you describe the lines from whisper hills indian valley to the area around manor.

The area there would be 973.

Riley: And can you describe the current state of the road?

The current state of the road is it is a 2-lane road. Manor and the county has agreed to -- I can't remember the term. It's a state funding mechanism to expand that roadway. So it's been a focus of manor and it's been a focus of travis county and so expanding that roadway has been one of the priorities and it is one of the key priorities for all of us, is 973 so certainly dollars will be directed towards that roadway.

So is the vision -- again, your vision of these two projects as they build out, and what you foresee residents here accessing a green line, assuming that one is built on the llano to giddings line?

You know, possibly. We are just projecting here but I would also wonder if the bus service would provide ultimately when that link comes in whether or not bus service from capitol metro would provide access from our rail line to our project as well.

And one other question, one of the speakers was comparing this to -- this and pointing out the two projects combined are two times the size of the miller environment. And I was wondering comparison, one significant difference is that miller was a public land and so there was a great deal of community interest and involvement throughout the development of miller. But given the size of these two projects and the fact they will require extensive infrastructure of all types, do you see a way the public could keep an eye on these plans and offer any kind of input as to going forward? We are doing first reading tonight so if someone were interested in these plans, is there a way they could become familiar with the outlines of the plan and not not -- and offer input as we go forward?

I think that really through the pid process, because we -- the way a lot of this infrastructure is going to be funded is through pid bonds which are issued through the city council and each pid bond issuance for the public hearings for the infrastructure it is going for, so as it is getting built out, the public will be go in that process, i think there is a built-in public involvement in the pid process.

In the second read something.

The second reading we will discuss the pid and that.

And that will be when?

I think currently we are on an august agenda.

We will have a briefing on july 29th with the city council about the proposed proposedpid. any discussion?
All right. I believe both of these items, 52 and 60 are ready for first reading only. Correct?

That's correct. so i would entertain a motion. Probably it is best to separate them first on item number 52. Mayor pro tem moves approval -- close public hearing and approval first hearing only item 52. Second by councilmember morrison. Further discussion? Councilmember riley.

Riley: I would like to ask staff about the -- have you had a chance to examine the details of the project, in particular the block points that are proposed in project.

One of the modifications the applicant requested was to be allowed to get administrative variances, if you will, to the block lane requirement, part of it is block lane requirements that exceeded the road will be requiring to before the zoning and planning commission and the applicant would still prefer that the staff have the discretion as is allowed under the today's standard code to be allowed to go to receive modifications to individual block lanes.

Riley: Sorry one more time the zoning and planning commission recommendation with respect to block lanes was that any deviances -- can you state it again.

Any deviance from the standard code go to the zoning and planning commission every time there is a subdivision that needs a block lane waiver. The applicant's preference would be that those go for an administrative staff waiver as opposed to going to the commission every time.

Riley: Okay. If I can just ask -- I can't remember who made the motion on this. If I can -- would it be a friendly amendment if I were to suggest that we -- we go with zoning and planning commission recommendation with respect to block lanes? your motion was for the zoning and planning commission recommendation originally? That was the assumption that you didn't say, so -- perhaps clarify which did you mean.

Martinez: That will be fine, zoning and planning commission.

Mayor leffingwell: Zoning and planning commission recommendation and so that's already in there, chris.

Riley: Okay. Great. all right. Anything further? All those in favor, say ." eye. Opposed say no. Passes on first reading only. A vote of 7-0. And we will entertain a motion on item number 60 for first reading. Councilmember cole.

Cole: Mayor I would like to point out when it comes to development out in the 130 corridor that we are especially appreciative of the amount of infrastructure that is being contemplated because we have had a real challenge thinking about that and even sought legislative action in the past, and so the applicant's desire to do phase-in development and partner with the county and capital metro and work with campo is

all very pleasing to us as a city as we contemplate the future growth in the desired development zone, so with that being said, I move approval of this staff recommendation.

Mayor Jefferingwell: Councilmember Cole moves to close the public hearing on item number 60 and approve on first reading only the staff recommendation.

Cole: Which is the staff recommendation. Did I say that? Staff recommendation. the staff recommendation?

Cole: Yes, mayor. who is the second? Second by councilmember Spelman. Further discussion? Councilmember Morrison.

Morrison: I wanted to add additional direction to have the conversation and develop some back for what the parkland would look like for the extra 100-acres. so that information will be provided when you come back. Okay. Councilmember Riley.

Riley: To reiterate we are talking about zoning and planning commission recommendation.

Cole: Zoning and planning commission recommendation. The board with the blocks. all " opposes say no, passes first reading voter 7-0.

Thank you, council, that concludes your zoning cases. and so I believe that brings us to item number 64. Staff briefing on item 64. Okay.

My name is Patti Robins the assistant chief with the Austin Police Department. I have with me senior police department officer Jason who is giving a proposed copy of the proposed ordinance and a sample of the agreement on -- for private land. Today we are here to discuss the public safety memorial project. This project started in 2008 and started by senior police officer Jason Hukkin. It was his brain child and then his passion, as a matter of fact he testified at the state capitol in 2009 and was one of the witnesses who assisted in getting the state law passed which allows for the public safety memorial markers to be placed in the right-of-way of any TxDOT structure. The other thing we have done since then is you have a sample of the private property agreement which allows us to place these memorial markers on private property. The only thing that is missing is our editing of our -- of the code. In February of this year, the city council passed a resolution initiating the amendment to city code chapter 25-2 authorizing the placement of memorial markers in the right-of-way on the property in the city of Austin. Public works planning as a result of right-of-way were directed on inside and right-of-way requirements and city legal was directed to -- the city legal was directed to draft amendments to the city code and of course Austin Police Department was asked to present a draft of the amendment to certain commissions. One of the things that you are looking at right now. Hopefully you have the green pieces of paper in front of you are the requests for additions to city code section 12-10-3. The first thing you see written in red is a request for definition of memorial marker. The reason we are asking for memorial marker is because the ordinance already describes signage. This is not in signage. This is a marker. We don't want to be competing with the people who are requesting permits for signage. The second part on there is under part two and it places

in there that the section does not prohibit the installation of memorial markers. And then the final addition to it -- or actually this is the addition to it, would be the part that is described on your piece of paper as 25-10-157. And it says that we can -- the memorial -- public safety memorial markers can be placed in public right-of-way in accordance with the markers of the section and of course it can't be within 25 feet of a driveway or pedestrian crosswalk or accessible sidewalk, ada and some other things. Some of the things that we were asked to do before we brought this to you was of course working with public works right-of-way in planning. We went to the integrity office and we asked if there was any ethics violation in receiving a donation of these markers. There were some people that are on the dias tonight who were there and the lucky family who owns the round rock memorial business presented these markers to the city of austin and we ensured that the -- what did I say? I am sorry. Just down the street. Okay. Rockdale, and of course if you were there and you saw them, they were huge and absolutely awesome and as a result all of these markers have been donated to the city. They all have not only apd inventory numbers affixed to them but also city asset numbers affixed to them and the other things we have done before we came here today is we did make the same presentation to the zone and ordinance committee and they approved our proposal and I think it was in april of this year and just this week we went to the planning commission and also presented this and they approved it then. And so we are here today. We thought maybe you would like to see, for those of y'all who weren't there, when we have the press conference on it, if you look at your screens, you will see, these are laying flat and there is a small map over to the right of it so you can see where in the city they would be placed and for those of you who don't know how many of these markers we have. We have one already in place -- and that would be william jones who was killed in 2000 -- the parks police officer, who was killed in 2000 and the rest you see on your screen so that would bring the total up to 20 -- 20 markers throughout the city of austin. If this ordinance is passed, we have already contacted the lucky family and they will be installing the memorial parkers throughout the city and they have -- this is -- if this is approved, they will be finished by the end of september and of course there is no cost to the city. These people donated it. Officer jason huskins donated his time and energy to this as well and before i forget I need to recognize a couple of people, our city attorneys who worked on this were christy orr and brent lloyd and davila and they spent a lot of time and energy on this, and if you have any questions, I will be happy to answer them.

Mayor leffingwell: Chief, I think you need to recognize another person who worked hard on this and i think that is the guy standing behind you.

Oh, yes, you guys. will you introduce him to us?

Yes, I will have him stand closer, before I let him talk, he is one of the district representatives and if he looks familiar he is around here all of the time.

Thank you, chief. Mayor, council, thank you for allowing us to be here today, my name is jason huskins and like the chief said I am the downtown commander representatives and I also need to add another couple of people to that list and that would be the mayor himself who was very instrumental in getting this through as well as nancy williams who I believe just entered. So this has definitely been a team effort and it's been a long road and there has been plenty of obstacles, but in the end, I think those obstacles make the even sweeter and i am hoping today will be one of the last hurdles we have to jump over. let me say a

quick word and i will recognize you but this process started years ago and this young officer took this on his own. He -- this is his project, identified all of the things that needed to be done to actually make it happen and of course we all realized that state public safety officers are covered under the state law right now that memorials can be placed in the right-of-way for state officers who die in the line of duty, but the wording in the state law was such that apd officers could not be. So obviously the first thing to do had to be done is we had to change the state law, and so I want to thank senator kirk watson from here in austin who carried the legislature legislation for us and affected the change in the state law and once that occurred, we were able to follow through on the rest of it fairly easily but of course it could not have been done without the help of our local folks here and we really appreciate the work you have done to honor our apd officers who gave up their lives in the line of duty. Councilmember cole.

Cole: Mayor, I simply want to thank you for all of the work you have done as a mayor and senator watson and also nancy has already been -- it has already been stated. We certainly recognize that you do a very, very difficult job and that these markers are there for officers that have been lost in the line of duty and especially for their families that remain, so with that, I move approval.

Mayor leffingwell: Councilmember cole moves to close the public hearing, approve the ordinance amendments on all three readings. Second by the mayor pro tem. Any further discussion? All those in favor, say " passes on a vote of 7-0. Congratulations.

Thank you very much. a long job well done. [Applause] that brings us to item number 65.

I believe item 65 was withdrawn. you are correct. Thank you. Sixty-six.

Mayor, council, item 66 is an item to conduct a public hearing in 66 PH .Conduct a public hearing and consider an ordinance amending Chapter 25-2 of the City Code to create a new residential use, Conservation Single-Family Residential. To be reviewed by Planning Commission on June 8, 2010. We ask to postpone that. they asked to postpone until june 24th. Seconded by councilmember morrison. All in favor say aye. All those in favor say no? Passes on a vote of 7-0.

Thank you.

Item 67.

Thank you mayor and council, greg guernsey with the planning and development review development, 67 is conduct a public hearing and consider a resolu granting a request by Walgreen Company for a waiver from the distance requirement of City Code Section 4-9-4(A), which requires a minimum of 300 feet between a business that sells alcoholic beverages and a school, for Walgreen's #06189, located at 12550 Metric Blvd. As mentioned before, walgreens is proposing to sell alcoholic beverage for off premise consumption at 12550 metric boulevard and there are two schools located in that area on palmar lane and also at 1805 scaffold lane. The property itself was rezoned back in the 1990s, it is already developed and here is where the walgreens store is and one of the schools a actually behind and the other one is actually facing parmer. The waiver requirements states the city council can consider a waiver of the 350-

foot distance requirement if it is determined that enforcement of the particular ordinance in this instance is not in the best interest of the public, constitutes a waste or insufficient use of land resources, creates undue hardship on the applicant, does not serve attended purpose, is not effective the or necessary or for any other reason that council, after consideration of health safety and welfare of the public and inequities of the situation determine it is the best interest of the community. And under this section that council may consider written consent of the waiver and it should say also public hospital, church, day-care and public school located within 300 feet of the applicants proposed place of business to be sufficient justification for the waiver approval and they actually contacted the school district and have support of both schools, basically the school district of this request, so, therefore, staff recommends a waiver. Here is a representative here from walgreens tonight if you would like to speak to them.

Questions.

Close to public hearing and move approval. there are no speakers signed up so councilmember spelman votes to close the public hearing and to approve item number 67 which is resolution granting that request and second by mayor pro tem. Any further discussion? All those in favor, say " aye. Opposed say no. Passes on a vote of 7-0. City clerk, I believe we have announced that item number 69 has been withdrawn, have we not? Okay. So we will take up item 68. Before you begin, -- before we open this hearing, are there any requests for postponement or issues of standing that anyone would like to raise? Hearing none, we will begin with the report from the city staff. Okay. Go ahead.

Thank you mayor and council, I am george zapalac with the board of planning development and review, 68. Conduct a public hearing and consider an appeal of the Planning Commission's decision to approve a four-year site plan extension for Western Oaks Retail Center, located at 4625 W. William Cannon Drive This project is located at the southwest corner of william cannon and brush country. The plan before you shows the improvements on the site which have already been built, indicated in yellow, as well as those remaining to be constructed which are in the pink. Already built on the site are a fitness center and one restaurant, as well as utilities and infrastructure improvement and the majority of the parking. Remaining to be built are two office buildings, an additional restaurant, a drive-in bank and additional parking spaces. At the south end of the site is open space which includes a setback from the critical environmental feature on the site known as serendipity caregiver. Cave. This place has a lengthy history back to 1976 when its received zoning of cs and it included a concept wall land plan, a restricted covenant with the zoning required additional use permit be approved by the planning commission prior to development on the site. Normally the uses proposed on this site would not be conditional uses, and it could be approved straightforwardly. However, because of this covenant, approval by the planning commission was required. The subdivision plat in 1977 allowed for conditional use of the permit and a water way development permit was approved in 1985 and condition at use in 1984. Both showed impervious cover and the conditional use permit expired in 1986. In 2002, a new conditional site plan was filed. It was grandfathered to the 1977 regulations with the stipulation that serendipity cave had to be protected as was the condition of the environmental quality commission. So the impervious cover was 8%, one building the sedimentation ponds and most of the parking was built under permit and pads of the three of four buildings were cleared. However, since no building permits were issued for the rest of the remaining buildings, the rest of the site plan expired in 2006. In 2007, a new conditional use site plan was submitted

and approved by the zoning and planning commission. It was again grandfathered to the 1977 rules and it provided for the construction of the four remaining buildings and 45 additional parking spaces. The restaurant -- one restaurant was built under this permit and the plan had an expiration date of august 10, 2010. Earlier this year the apdidn't requested and received a one-year administrative extension which established new expiration date of august 10, 2011. The request before you this evening is to extend the site plan for four additional years to august 20, 2015. The -- this extension was approved by the planning commission on february 9 of this year and was approved by the sos alliance based on allegations that it violated site plan extension expiration rules, it violated the project duration provisions of the city council and its violated the sos ordinance. The staff recommendation is to deny the appeal because the plan is subject to the 1977 rules, not to sos, and in our opinion and it is not subject to project duration. Project duration is a provision of the code that states that a project in the drinking water protection zone may be grandfathered to old regulations for only three years from the submittal date. However, this section of the code only applies to project that is were initiated after 1997. Project that is were initiated prior to 1997 may receive unlimited extensions. So, therefore, the staff recommendation is to deny the appeal. Councils options are to uphold, reverse or modify the commission's decision. If you uphold the commission, and grant the new -- then you would be granting the extension to 2015. If you reverse the commission and deny the extension, the plan would still stay alive until august of 2011, so still have a little over a year to complete the project if. You choose to modify the commission's decision, you could extend the plan for a different length of time or impose additional conditions. That concludes my presentation. I am glad to answer questions.

Mayor leffingwell: Questions. Councilmember cole.

Cole: I have one quick question. It is my understanding that this property is pretty much built out?

Yes, we can go back to the overhead. I don't know how well it shows up on your screen but you can see the areas in yellow are already constructed. That includes two buildings and most of the parking. The portions remaining to be built are shown in pink and they include two office buildings, two small office buildings, an additional restaurant, an a drive-in bank on the corner, which would also require determine parking, but the majority of the parking, the ponds, utilities and other infrastructure is in place.

Cole: So in your opinion, how did that play into the planning commission's decision?

That appeared to carry a certain amount of weight with the commission in granting the extension because of -- because they felt that most of the disturbance had occurred on the site and the only facilities remaining were sort of to fill in around the existing parking area.

Cole: Mayor I am going to go ahead and move -- we have speakers.

Cole: Sorry, I am sorry. I didn't know.

Mayor leffingwell: Councilmember riley.

Riley: George, I want to ask you one basic question, the real -- the underlying problem here is one of grandfathering. That -- the suggestion is that this -- that this project is subject to 1967 regulation. And I want to make sure we understand exactly why that would be. If I look over the history of the case, it appears like there is some pretty significant gaps. For instance, after one of the earlier permits fired in 1986, and then it wasn't -- expired in 1986 and then sometime -- essentially no activity we see in our time line until 2000, and it wasn't -- and the new site plan wasn't filed in the '02 and at that time the '02 site plan was subject to -- was subjected to 1977 regulations. Can you help us understand why, in '02 that we would be applying the 1977 regulations considering there appears to be breaks in activity since that time?

Well, under state law, the project is allowed to grandfather back to the first permit in a series and in this case it was determined that the first permit was the subdivision that was approved in 1977 or filed in 1977, and so the site plan, then, was allowed to go back to the 1977 rules. And so that -- that is -- basically it is because of state law that establishes grandfathering rights that they were allowed to comply with earlier regulation.

Riley: Is that based on a determination that the project as of '02 was the same project that was -- for which permits were applied back in '76 -- '77?

Yes, it was essentially the same project. Now, there was a conceptual site plan attached to the original zoning case in 1976 and they did modify that somewhat. They didn't follow exactly the same layout but it was still a retail center and basically, in staff's opinion, they had shifted some things around but it was still essentially the same project that was initiated in '76.

Riley: In 2004, council approved a rezoning case 248-acres for the physical fitness studio. Did that or any other zoning changes over this long history, did any of that make this a different project for purposes of grandfathering?

The -- there was a requirement to rezone because they needed grco for physical fitness studio which is a personal improvement studio which wasn't allowed under Ir zoning they previously had when you -- when you get to -- to specific zoning categories like that, it doesn't necessarily change a project. You still have essentially a retail type of project. It might be more intense or a different type of retail but it is still basically the same type of retail so i believe that's the reason why it was determined that it could be grandfathered back to 1977. I think also there was some consideration of fairness and that the project had been initiated and had relied upon certain decisions that had been made -- staff decisions that had been made earlier and it was still considered to be in the same general type of project as before.

Riley: Okay. So staff's conclusion is that even with the zoning change in '04 and all the other events over the course of the long history, that we are still looking at essentially the same project that we first saw back in 1976?

That's correct.

Riley: Thanks.

Mayor Jefferingwell: Councilmember Morrison.

Morrison: Could you talk a little bit about if this appeal is upheld and the site plan expires and they are not done and they want to finish building it out, what would happen at that point?

They would have to file a new site plan. They could, again, ask for grandfathering and we would have to re-evaluate it at that time and have to determine whether we still felt it met the same -- is still essentially the same project and still have the same grandfathering rights.

Morrison: And I guess this would really be a question for legal, and that is, do we know the decision -- do we know one way or another what the decision would be if it went through the grandfathering process -- consideration process?

I am Greg, director of planning and development review, ultimately that decision would come to me and not having that application before me, I am not going to speculate, necessarily what my decision would be without having input of the 245 team that would review such applications and seeing what they actually submitted.

Morrison: Thank you. And there is one other issue that has been raised, a question about notification for the 2007 site plan. Are you familiar with that issue?

Yes, I am.

Morrison: And the concern that is being raised? Can you, please, explain a little bit about what that was?

Yes, when the site plan was submitted in May of 2007, normally staff is allowed to ten days to make a determination as to what rules apply and whether the application is complete and ready to be reviewed. We went through extensive discussions at the time. There was a lot of back and forth and ultimately it took us about 60 days until July 20th to determine that it was able to grandfather. So basically, instead of the ten days that we would normally provide, we took about two months, and so as a result of that, we attempted to expedite the staff review of the application. Basically it was the same -- when we determined that it grandfathered back to the old rules, there was nothing new that we could apply to it, so we looked to determine whether the application was, in fact, if same as the previous plan and we determined that it was and in an effort to expedite the processing, there was, in fact, a user that was waiting on the approval of the plan to build on the site. We -- we did notify for the public hearing immediately. And -- and held a public meeting about two weeks later after the application was received, so that's not the normal way we operate, but, you know, in trying to compensate for the delay that had occurred here, we did attempt to expedite the review.

Morrison: So the concerns of course are that notification is make sure that people in the community have an opportunity to respond and everything and could you confirm for me that there was a requirement to notify that there was a site plan application -- a new site application but that notice didn't go out?

Well, there was notice -- there was a notice that went out for the application, now --

Morrison: I mean for the hearing. You are saying?

Sorry, there was a notice of the hearing but not a notice of the filing.

Morrison: But there was a new application that go out and the notice for the hearing had the old site number on it.

That's correct.

Morrison: So it is possible that people didn't catch it there was a new site plan, a new process starting up?

Well.

Morrison: You don't have to comment on that. That is my supposition.

Okay.

We did send the notes and this is shortly after we had implemented a new computer base an we had problems with numbers and that kind of thing.

Morrison: I remember that.

So when the notice was sent out it had old file number on it and the correct address and it was the basically the same plan -- exactly the same plan as before so we didn't send a notice of the filing of the application but we sent out a notice of the hearing. The information that is required for both notices is very similar and so if the law department did -- so the law department did review it and said the requirements were satisfied and that the origin plan was legally approved by the commission.

Morrison: Okay. Thank you.

Mayor leffingwell: Follow-up questions, I have a couple to follow-up to councilmember morrison's question. When was the property considered to be grandfathered under chapter 245?

It was grandfathered to december of 1977. When the first subdivision application was filed. do you know when the decision was made by the committee?

Oh, it was made in -- i am sorry, february 26, 2001.

Mayor leffingwell: 2001. To your knowledge, have any of the facts changed, the facts that were used to justify that decision?

Not to my knowledge.

Mayor leffingwell: guernsey, do you know of any facts or changes -- changes of facts of the case?

We do have the application of 2006, I think expire from the 2002 application, and then you certainly had improvements that were made from 2001, where you had the fitness center built. You had the restau built, and so you had i guess significant infrastructure put in.

Mayor leffingwell: Right, but a determination was made in 2001 that the property was subject to chapter 245.

Right. And the facts dealing -- it is still the same subdivision that was being used for the grandfathering for those dates thereafter. I think the conditions changed through time because there was improvements built. the conditions changed b the -- if it was grandfathered in 2 those -- those improvements made would not have -- were in accordance with its grandfather status?

That's correct. The two existing buildings that out there, the parking, attention filtration, the infrastructure that was brought in was based on the original grandfathering or those subsequent ones from that. But there haven't been any new revolutions that would have been -- revalations that would have come to light.

I am not sure.

Some new facts that came to light.

I haven't known any new facts that have been coming up other than improvements have been built.

Mayor leffingwell: okay. That's good. Okay. So we will go -- our procedure is a little bit different for the appeal process than from a zoning case. So we will have -- the appellant will be given 10 minutes and then we will have those speaking for the appeal will be allowed 3 minutes and time donation as howed and then the -- as allowed and the person -- the applicant, or respondent will also have ten minutes to present his or her case and then those opposing the appeal will be given 3 minutes each and then a three-minute rebuttal by the appellant. Before we start, you are andrew hawkins? And you are signed up for both for and against the appeal. I assume you are for the appeal? And collin clark is signed up against the appeal as is roy waley. I am assuming you meant to be for the appeal?

i want to make sure I call people in the right order, so we will start with you andrew. You -- you have ten minutes.

developer gets a replacement site plan and an accommodation letter. What is this accommodation letter? It's written by a system director, that's watershed, states that the city concludes that the proposed development is a new project for the purposes of chapter 245, okay. And then it says the city's decision has still allowed the proposed development to proceed under 1977 regulations and this is really -- all the key provisions revolve around this, whether this was a legal authorization to proceed under 1977 regulations. We don't believe it is, and this is what we assert to be legal violations. The 2007 site plan do not go through the 275214 provision. This is the only process this city has for a project like this to

establish grandfathering status. Because it didn't go through the committee properly, an illegal and unauthorized authorization from sos, and an assistant director cannot unilaterally exempt an applicant from these parts of the city code and that's what happened, and that's what everybody has been operating based on. You've heard a little bit about the notification provisions and how those were violated. Again, bending over backwards to allow the developer to continue on with his grandfathered project, in this case simultaneously approving zap the replacement site plan and reading into the record a new site plan number, and in my opinion providing notice under different site plan numbers no notice at all, and that's not a technicality. That's something that's very important to the process. But even if it had been properly noticed I would question how you could really tell people about something that we're going to be calling a site plan that has grandfathering abilities, and that's really the only way to think about it because it didn't properly go through chapter 245. And I just wanted to again, you know, hit these points. There's been some fuzziness about this but it didn't go through the 245 committees. These are emails that purport that again. And this is writing to greg guernsey, came to for a 245 application, but they withdrew the request. I documented this in my records. So again, if there's no chapter 245 determination, what are we looking at here? Well, city staff has said and this is right, this is the way you would think about it, a replacement site that allows them certain grandfathering abilities. That probably sounds curious to a lot of you. It definitely sounds curious to me and I don't know what the legal basis in the city code is for something like that. A site plan is meant to establish compliance city code requirements and that would make sense if it had been properly grandfathered to 1977 and those were the requirements we're looking at but that's not what happened. So you turn a site plan into a vehicle for grandfathering status. That's not the way the process works. And as the planning commission pointed out what this meant is that this letter granted an exception to the sos ordinance and did so administratively without going to a public hearing at council. And there's no such thing as an administrative variance from sos. It's prohibited by city code. No exemptions, no special variances, no waivers, certainly no administrative variances. Site-specific amendments to sos are entrusted to city council and require approval by a super-majority. It's a very high board. Here there's no notice, no hearing, no approval, no consideration at all by city council. We only have this letter that's sweeping and contradictory and purports to allow someone to keep building out under 1977 regulations. And again, here's what another dissenting planning commission says. We are extending a site plan that doesn't comply with our most stringent water quality regulations for our most sensitive watershed, and i don't think that's the right thing to do here. We wholeheartedly agree. The bottom line here is for the city council to approve the site plan extension would effectually amount to an abdication of your responsibilities to ensure meaningful process for determining grandfathering status, enforcing and maintaining the integrity of sos ordinance. Now, the burden is mean. It's on the appellant. I believe I've adequately demonstrated that. You all may uphold, modify or reverse. We're of course asking that you reverse the extension, to grant the extension and require that a new site plan be filed that can then properly go through the chapter 245 committee. Just to discuss a little bit sort of not just the legal points but the practical considerations, the equity, the policy. There were two planning commissioners who spoke about that I reasons for granting. One said it had been gone for a long time, the other said -- this has gone on for a long time, a decade, and i think the developer has had an adequate time on this project. As far as the majority of the damage being done, this is a picture of where one of -- where the bank would go, does this look like the majority of the damage has been done? Just to be clear again, this is an extension to allow that would help them add another 10% impervious cover to this site, which is already at 34%, 15% being what sos imposes in the recharge zone. So I just don't think that's a valid

reason. There's real damage that can be prevented here on the recharge zone. Let's talk about the equities. Was the 2006 expiration date unknown to the developer? Know, besides being on the corner of the site plan here are corrections they were submitting where they clearly recognized the expiration date in '06. And these are, you know, sophisticated parties. We're talking about somebody who has a -- a developer as howard representing him, lenihan, they had a duty to figure out with their site plan was . At least that would be part of their due diligence, and they were under the impression their site plan would not expired because it was tied to a restrictive covenant. Now, if you look at that provision closely enough you'll see that the site plan has to be incorporated into the restrictive covenant. So to me, considering the sophisticated parties, considering the fact that it's pretty plain what those provisions mean, there is no way that this argues in their favor, and really the ultimate point is considering all these violations and whether we're going to allow this project to go on, what is so special about this project? Because I think there is a special burden on city council to allow a project like this to go forward on the recharge zone when our master plan and city policy for decades has said that we try to minimize impervious cover and the drink -- in the drinking water protection zone. What is so special about this project that we should give it another shot? And that's just what I would leave you with, and i certainly can answer any questions. Questi questi on, anybody? Okay. We'll move on. Others wanting to speak in favor of the appeal? Tom hays. Tom hays? Well -- okay. All right. Colin clark? Bill bunch? Roy whaley? Good. Those are all I had signed up -- who I think are for the appeal. So who represents the respondent? Jeff howard? Jeff, you will have ten minutes.

Thank you mayor, good evening council members. My name is jeff howard. I'm here this evening on behalf of the applicant, who is the appealee or respondent in this case, and I think it's important to speak in those terms, appellante, appealee, because that's why we're here today, it's an appeal. I like respondents better.

I do too. It's important to point out it's not a zoning case or other legislative matter that would involve typically the type of usual discretion you're used to seeing in terms of adopting ordinances and stuff. It's an appeal of a planning commission decision, and hawkins liked to cite the two dissenting planning commissioners but didn't seem to cite the 6 members that voted in favor of extending the site plan. And as an appeal it carries with it special requirements in our code. And foremost is the appellant burden and hawkins referenced it he didn't cite it. Here it is on the screen. Sos must say that the appeal is being applied contrary to applicable law or regulations, not contrary to hawkins would like it to be but not applicable law. It's not just do you agree or disagree with the planning commission, it's whether the planning commission who has the gretion discretion acted outside the law. What is the law? Under the plan the law may be extended two things. The first is showing progress under the site plan and the second is regarding traffic. So the first requirement, one of three provisions can be satisfied, good faith expectation the site plan would be constructed, the applicant has constructed at least one structure or the applicant has constructed significant infrastructure. hawkins didn't dispute any of that. We've had two buildings built, two buildings graded, cleared and graded. We've had about 80% of the impervious cover is put down, all of the water quality facilities, all of the utilities, all of the roadway improvements that are required for full build-out at the intersection of brush country and william canon, all the sidewalk extensions we -- the traffic calming measures we put in. So there's no dispute these factors -- and the tia was determined to be valid. So there is no dispute, i think, and no contention that those factors were met.

Once those factors are met, planning commission's discretion to approve the extension is triggered. What else -- what else is the applicable law? Again, sos is charged with notifying how the decision, quote, does not comply with requirements of title 25. That's the land development code. And they cited project duration in the sos ordinance, but staff has told you and legal has determined those provisions are not applicable. Since they're not applicable, the planning commission decision cannot be contrary to them. Some background facts. The final plat -- the final plat was filed in 1977. That triggers grandfathering under state law. A 1984 site plan and special use permit were approved, showed 60% impervious cover, had no water quality controls and no setback for a cef, and council member riley, in response to one of your questions, the 1984 site plan as opposed to the special use permit -- the special use permits expired in 1986 but the site plan was a water development permit that did not expire. Here is the 1984 site plan. You can see the amount of development. It's a commercial retail center. Now, in 2002 a new site plan was submitted. That showed 45% impervious cover, significantly less. It provided water quality controls, predicted serendipity k. Twawd determined by the quality control committee and the the director to be subject to 1977 regulations. We had extensive negotiations with the western oaks property owners negotiation. We entered a restrictive covenant and took a use permit through the public process, had a public hearing and it was unanimously approved by zoning and platting commission. Sos was a notice recipient of that. Despite notice to be heard there was no opposition. This is the 1704 determination back in 2001 that was determined as we submitted our 2002 application. In 2004 we did have a zoning case for 24-hour fitness. Council member riley, not only did that not affect the 1704, the staff report that went to planning commission and city council specifically disclosed the subject tract has been determined to be grandfathered back to 1977, and despite that fact, again, there was no opposition for sos for this up-zoning for grandfathered tract, no opposition from the public. Again, we met with neighborhood, we worked with staff, we worked with council, planning commission and the neighborhood to come up with a good -- good plan. So in 2007 we were notified that the site plan had expired. We disagreed with that but ultimately agreed to resubmit. On may 24, 2007 we submitted a site plan application that was identical in every respect to the 2003 site plan. And so consistent with its prior determinations, in 2001 that the project was grandfathered and again in 2004 in the zoning case, again, being the same project, not a new project but the identical same project, staff again said 1977 regulations apply. Now, did it as an accommodation letter? That's true. But mr. hawkins is wrong. I don't think he upside downs the process. - He understands the process. 1704 is an ad hoc committee. It's not a creature of code. Ets just a group of staff that gets together, considers these things and tries to come up with some rationale for studying these things. It's not the process. It's not the code. It's just an internal ad hoc committee is that looks at these things. Ultimately the director has to make a decision on 1704. The director has got to enforce these regulations and determine whether state law applies or doesn't apply. That's the role of the director. The director used that discretion in issuing the accommodation letter. The accommodation letter is clearly grounded in 1704. It refers back to 1977 regulations and it references the 1977 final plat, again, consistent with the prior 1704 determination. On july 31, 2007, after proper notice was sent of public hearing, which also gave notice of the application, the zoning and platting commission approved the conditional use permit. Despite notice and opportunity to be heard there was no opposition. And so the 2007 project cannot be a site plan because it's identical in all respects. This is the 2007 site plan, water quality protection put in from serendipity careful was provided. So one of the -- all the required factors of applicable law have been met and the maker of the motion, who's former chair of the environmental board, stated there would be no significant environmental impact granting the steppingses since the water

quality facilities were already in place and almost all the site work are occurred. Now, that's the legal aspect of it. The other thing to remember is this is a good project, it has enhanced environmental measures in which we voluntarily gave up entitlements. We engaged in public and open process. There was four public hearings, all of which environmental groups had public hearing and notice of a public hearing and they were all unanimous. It had comprehensive deed restrictions with the neighborhood and we have had staff recognition and neighborhood support every step of the way, and the applicant has performed all of its obligations under the site plan, it's extended sidewalks, built ponds, protected a cave, it's honored the architectural requirements in the neighborhood and it's continued to have an ongoing relationship with the neighborhood as we go forward. The only reason the project is not fully completed is because the current economic downturn in commercial real estate. That's it. So in conclusion the burden is that sos must prove the planning commission committee was contrary to applicable law. If it doesn't it hasn't been met. Again, the applicable law has been met. Pc acted within its authority. There's been no significant environmental impact by granting this provision it's a good project, and granting the appeal and thereby reversing the extension would take advantage of the exurnt current economic downturn to punish a business that's done a good job, and done it in a right way, by working staff in a very public and openly vetted process. And finally this is recommended by staff, supported by the neighborhood and was approved by planning commission 6-2, even in a legislative context that's usually a pretty good basis for approval. So with that I'll be happy to answer any questions you might have, and I appreciate your time this evening. Thank you very much. council member spelman? you said the burden of proof of is on the appellate ant appellant and it's not ow.

Right. can you tell me where I can find that in the land development code so i can look at that?

Sure, if we go to the second page of the presentation, it's 25-1-1 # 90 of the land development code and it's also that requirement one more -- two more, sorry, right there. 25-1-190. That's also 193 requires to state how the decision failed to comply with code requirements. So again, the paramount issue is how did the decision not comply with applicable code requirements. would you go to your last slide? You talk about the same process, about the burden of proof, the last slide in your presentation.

The conclusion?

Mayor leffingwell: yeah. That's what I was looking for. It says that sos must prove that the pc decision was contrary to applicable law.

Yes, sir. so in order to grant the appeal we would have to find that the pc acted contrary to applicable law.

Yes, sir.

Mayor leffingwell: okay. Council member riley? yeah, just a couple questions. We're talking about the interplay between state law and city ordinances and regulations. Your plan is rooted in grandfathering rights under state law. I just want to make sure i understand your argument conceptually. The city had a number of procedural requirements for filing site plan and keeping it moored forward, keeping oh moving forward and keeping it alive. Is your position that even if an applicant does not meet city procedural

requirements with respect to the processing of a site plan and keeping it alive, that under state law you're still entitled to your grandfathering rights in perpetuity, regardless of any violations of -- or failures to comply with city procedures?

Not exactly. The answer is yes. The mere expiration of a site plan, in my opinion, does not cause the loss of chapter 245 rights. However, that is, of course, subject to an applicant demonstrating progress towards completion and making sure the project does not become a dormant project under state law. We clearly well exceeded the requirements under state law so that we demonstrated a project towards completion. So I guess the answer to your question is, if a site plan expired and zero work done, no progress at all, then it's possible that you would lose your 245 rights. That's not the facts we have here. but your site plan did expire.

Yes, but under chapter 245 there's nothing in that state law that says if a permit expires, the project expires. That's not in our law. What's in state law is your project can go dormant if you don't take certain steps to ensure that you keep your project alive. We've more than exceeded those estate law steps to make sure our project is still alive. summarize what those requirements are.

Basically it involves building infrastructure and spending money. I'd have to pull the local government code, I'm sorry, council member. and then shifting gears to the environmental benefits, I know at the planning commission there was some discussion about a couple additional environmental benefits beyond what we see there today, in particular responsible questioning from commissioner anderson, there were some indications that main water harvesting would be implemented on the buildings that are going to be built on that bank side on the corner. Is that correct?

Yes, council member, thank you for -- I neglected to mention that. Yes, we've agreed to do rainwater harvesting on the new buildings, all the new buildings, and we've also agreed to preserve additional trees. There's some -- can you be more specific on both of those things?

Well, we've got three or four buildings, I believe, that still need to be built, and those would be rainwater harvest.

Riley: to what agree? I don't know that we have --

paul, can you talk -- we haven't specified. You know, we'd be happy to talk about what specifications that would be. It would be, obviously -- i mean, the idea would be to capture the rainwater -- something more than a rain barrel.

Absolutely. Something more than a rain barrel. The idea would be to capture the rainwater runoff and use that in an irrigation system that we could then use on-site, and it would be definitely more than a rain barrel. so essentially all or most of the rainfall on the -- that would be anticipated on those portions of the tract would be captured in a rainwater harvesting system.

Yes, and then used for irrigation purposes. And on the trees we committed to at least 75 additional branches, so that's not diameter -- that's diameter, not sir crumb france. So we -- circumference.

Right now -- last night -- I see what the appellate ant is talking about because there is a significant area on the northeast corner of the tract, southwest corner of william canon and brush country trail, and there is a significant tract there with a lot of oak trees there. Can you just paint us a picture of what -- to what extent those trees are going to be preserved?

We have an exhibit I can show you if you just bear with me.

Council member, my name len and I'm here as a land planner and site designer, and when we talked to the planning commissioner I went back out to the site and because it was a bank drive-through we felt like looking at that and what we could save, there were at least 75 branches and trees that we could save from the site. And this is an exhibit. What we have done is the bank was on there and we were looking at changing that to a restaurant site because that site was a one bank one site and chase bought bank one and said that they couldn't be a bank. So this site plan that you see shows the bank one on the top, and then the restaurant that would be sitting back in the back with a patio and kind of indicated where those trees could be saved. So we actually went through a detailed site plan to show how we could, from the bank situation, on the top -- well, it's on the side there, to your right. The other scenario, that does not show the drive-through lane. It shows a restaurant site and how those trees could be saved. So we did a site plan to show exactly how we could do that.

So a significant number of trees on that corner on the bank site will remain in place?

Yes, council member riley, we could save this large oak here. You see all these oaks in this area we would be able to save, and then by eliminating the bank and doing a drive-through we're going to save a significant stand as well.

Riley: okay. Thanks. Anythi anythi ng else? We have several more speakers who are against the appeal. Peter gilbert? Do you want to speak, peter? You're assigned to donate time. He didn't use any. Sandy gilbert? Same thing. Paul lenihan? Three minutes.

Welcome to the city of austin process. I think we've all been involved in it for quite some time and I have been diligently working on this project since 2000. I'm not going to go through putting the landscape and the walls and the signagage saved serendipity cave cave and the water quality pond. What I was excited about, and if you could put this drawing up for me. What I was excited about is this is a community note. We've gone in here and improved the situation. You can see the site. It's kind of outlined, and we did build a cave, but i drove by there last night myself, and there's a lot of people working out at the 24-hour fitness center, and a lot of people at panera bread, and I said, what a wonderful thing people are going to this area. And then you take a view of the entire corridor, and if you could span out a little bit, you will see that mopac is -- and william cannon is a major intersection of this city now, and western oaks and the neighborhoods are all built out from this area and this is where they shot and shop and where they eat and live and they work ut out and they enjoy life. And we are trying to do good environmental planning

and at the same time locate people to do their needs at major intersections at the city. And this is it. And I've been personally to, I don't know, I'd say at least 10 to 15 planning commission hearings on this project because some would be postponed or some would be gone. I worked on the zoning case in 2004 when we put in the 24-hour fitness. I've been to, what, 10, 15, 20 neighborhood meetings talking to the neighborhood. I have 110% support. I've never worked with a neighborhood group, so closely with architectural controls and trying to make it a nice thing. You asked me how this is protected environment? Look at the overhead protection, what we have done. We have taken the whole one-third of the site, put in a water quality pond that's size oversized and did a good job in the process. It's been continuous. You had a computer system that was a glitch. We did a correction to this plan. When you-all said the plan was expired for paneras bread, we did a correction and all of a sudden a month later people said it's done. We said it's not dead. We've been working on it. We've built the infrastructure, we've landscaped this, put in the utilities, and if you go in and build any part of the site we're going to try to save the trees, detailed site plans on how to protect those trees and everything is going to run to that water quality pond that's oversized to handle it. I guess you know over the last couple years I've been very vocal about the economy, and I've asked you-all to please give some support to the business community and try to extend these site plans because I've told you it's not enough time. We've done it correctly. We've done it according to your rules, and I would please ask that you -- that's all your time.

Thank you. If you have any questions I'd be more than happy to answer. Thank you.

Mayor leffingwell: okay. Sara summers? Welcome, and you have three minutes.

Thank you, good evening, mayor, council members. My name is sara sommers. I represent the western oaks property owners association. I've spoken to you previously. I've spoken to the council since 1982 regarding this tract. I can answer any -- probably any questions you have pertaining to the history of this tract. When I bought my home in the subdivision in 1981, I was fully aware that this was intended to be a retail development. It also intended to have some sort of health facility at that time. So, in essence, this project really hasn't changed from that overall concept. What has changed in working with the developers over time is environmentally we have made this a much more sensitive project. We have reduced the impervious cover by approximately half. Now -- so you will understand what half means, it's down to approximately 44%. If you double that you will have an understanding of where this project started. The density has been significantly reduced also. We have been dealing with the current developer for approximately ten years. They have been very responsive and very generous in meeting our concerns. They have gone above and beyond what we have asked in numerous cases. The neighborhood has always been involved and aware of thy site changes. -- Any site changes. There have been no surprises. The sos began talking with the developer approximately a year ago. There has been another brief discussion this evening with another environmental group. Those people have never contacted our association. They have never tried to work with us. They have never assisted us in bringing about these changes on this tract. We would appreciate your support of what the developer is asking for. There really has been a lot of improvement on this tract. It is basically what the neighborhood was expecting as far as a retail tract. For over 25 years. It's just a much better project. It is much more environmentally sensitive. I'd be more than happy to answer any questions you might have. thank you. Those are all of the speakers that we have signed up against the appeal. Additional people who signed up, jill carpenter for, brad

rodneck for and colin clark against, all not wishing to speak. Now we'll go to andrew hawkins for a three-minute rebuttal.

Thank you, mayor and council. Just a couple of brief points. I think on the legal standard, we completely recognize our burden. We're not trying to shift that in any way. I don't think it's just about the provisions on-site plan extensions, though, if everything had been done properly to begin with, yeah, that's what we'd be talking about, but because at that moment in 2006 the whole process was disregarded, that essentially put everything on the table and all the log I was talking about, they were applicable to this situation and they were violated, as I showed you in my presentation. So as far as -- i howard said I didn't understand what the chapter 245 committee is. I understand what the chapter 245 committee is. I understand it's ad hoc. But you saw the emails i showed you in my presentation. It didn't go to the 245 committee. I have emails right here that say this came out of staff files. People's own notes that say director's decision was made without consultation of 245. No determination by 245 t. So, you know, we can be fussy about that all we want but there is a process and it was violated, and really, I mean, if their grandfathering claims are as strong as they say they are, why can't it go to the 245 committee? What are we so afraid of? I mean, a project like this should have a special burden. I'm sorry, I don't see why the equities would argue in favor of disregarding the applicable process so that they can get their grandfathered project on the ground quicker. I think the equities argue the other way. I think we need to be extra careful about projects like this and I think we need to send them to the only structure we have, which is this 245 committee, and if we say that it's okay that it didn't go there, then we're sort of giving up on any process at all. And I think that it's a huge problem going forward and legally. So I do hope that you will reject the site plan extension and be in favor of a real process. I know there are considerations that howard is not going to talk about and that we're not going to talk about up here, legal considerations, but to me what I put before you are violations that need to be recognized, and I've established those. Those have gone un rebutted and I ask that you reverse the planning commission's decision. Thank you. I have a question for you.

Yes. do you have any specific comment on how you think the planning commission acted contrary to applicable law?

Well, I put all the same things I put in front of you tonight, basically, before them, and I was really hoping all along that things would become clearer to me and that there would be some explanation that would invite city legal to come talk. Eventually, though, it all sort of we want, let's go back into executive session, grant the extension, very little reason why. So I think it's contrary to everything I showed in my presentation, contrary to the way the sos ordinance works, contrary to project duration provisions. Notification was violated. That came out after the planning commission, but applicable law that was violated here. We can con screw our legal standing as to make -- con true this t a focus on one little test and to have me try to describe how that test was violated. There's a lot more at stake here and essentially was an abuse of discretion, is what I call in legal terms, to grant this extension. i guess what I'm getting at is most of the things we do here I think have been described as legislative, where we have discretion, like zoning. It's a discretionary thing. And apparently, as i understand this appeal process, it's not discretionary. We have to make a specific finding that the planning commission violated the law when

they approved the extension. So you don't have to answer -- I think you've answered adequately. I just wanted to --

okay. Council I?

Mayor? council member riley. I just have a few more questions of staff.

Mayor leffingwell: okay. hawkins make the point that we need a meaningful process for grandfathering, and he also notes that this case is not 245 or 1704 committee. I guess maybe a starting point for that discussion would be, can you outline just very briefly and generally what the process is meant to be -- what the process should be with a typical grandfathering claim?

I'll attempt to answer that and perhaps thomas might want to chime in. But essentially when an applicant submits an application, they have to fill out a form indicating whether they're requesting any sort of grandfathering, and the basis for that. And the staff then researches the history of the case and, you know, determines what the facts are, what prior approvals were obtained that might give them some sort of grandfathering claim, and then they take that to a committee of watershed staff, of planning development review staff and the law department to present the information and discuss it and see whether the committee agrees that there is a legitimate claim to grandfathering. guernsey, you may want to add to that.

Let me add to that, we don't remember consider ourselves a committee. We consider ourselves a team. I want to make that distinction. Ultimately whatever the team decision is, if the applicant on the case disagrees with that decision, usually there's a reconsideration maybe of that team, but ultimately the decision goes to the director of the department, and the director of the department makes that final determination. So in the end as it was my predecessor, or me today, it would be my responsibility to make that determination in the end, regardless of the committee's decision, or the team's decision. greg, in a typical case when that happens and it goes to the committee, if a committee determines that a case -- that a particular application should be grandfathered, does that amount to an administrative variance to sos? no -- well, all we're doing is just establishing if the case that's before us is a -- is a project that is continuing under its original permits, and so it's not necessarily waving -- or -- waiving or i don't consider it a variance. It's establishing a right under state law that we are simply recognizing. under state law sos doesn't apply so that's not a variance to sos.

It's not whether it's sos or any particular regulation. We're just establishing a point in time when the rules were initiated, a project, i should say, has been initiated and what rules -- what apply to that project. particular to this case, in 2006, after the site plan expired, the applicant comes in and what heard is that instead of going to the 245 committee, the applicant just got a commendation letter and filed a site plan. So the first question is, why didn't it go to the committee?

I'm not sure why it did not go to the committee, but if the assistant director was acting on behalf of the director, it was still a proper decision, I'd say, in the sense that going through a process like this, ultimately it's the director's decision of the department to make a determination. It may not have gone to

the team, but ultimately whatever decision is reached, the director could overrule that team decision and establish the decision on their own. and can you explain how we wound up with an accommodation letter in this case that essentially said this is not -- this is not the same project but we're going to allow grandfathering rights anyway? since i didn't -- I don't know exactly what the rationale of the decision that was made, I don't know if I can really comment on that because I was not -- I was not the director at that time. It's just a -- it's just a -- I'll pass it over to .

Thomas of the law department. Council member, the letter is just -- the words were perhaps just a poor choice of wording, and the substance of the letter, though, expressed was the director thought that the applicable regulations were under state grandfathering, but perhaps the words were just a poor choice of words. I want to ask one last question, and I guess I'll ask it of you, and if guernsey or anyone else wants to jump in I'll welcome that. Again, what we heard was that a plea for a meaningful process for grandfathering, and I think the public has a reasonable expectation that we will be very careful in considering grandfather requests, that they will not be accommodated arbitrarily but that we will have a standard process that complies with both state laws and city code and policies. This case was a procedural mess in some respects, and so the question is, how is the public -- how is the public going to have confidence going forward that we will have a meaningful process in place that will ensure that there is appropriate review of grandfathering requests?

I believe that's more of a policy question, but from a legal standpoint the law department is committed to making sure that the grandfathering decisions that are made do follow the standard process and are only granted when state law actually requires that they would grant it. guernsey, can you add anything to that? yes, well, I'm certainly committed to a process that we would follow in going through this. There is like -- actually tried to sit in a majority of these meetings on the team and then would consider additional information, if it's provided, either by my staff or by the applicant who comes forward. About you all of these are done with legal staff present. And -- when we're in that setting, and I would not issue a letter of accommodation without careful forethought and actually speaking with our legal council before undertaking such a decision. and then to what extent does the public have the ability to review any of these decisions? well, the public certainly has a right to review any of our files and look at the result. Decision. The participation of whether or not -- or how we make that decision is really -- it is a private matter between myself and my legal council in that sense, so what we look at or what we discuss in that I think is confidential, between myself and my attorney, in this case our city attorney's office. But certainly the information is provided to us and the resulting decisions are all followed. council member spelman? guernsey, let me ask you a question, a hypothetical question. Suppose this council shows to uphold -- chose to uphold the appeal. The appeals were accurate, site plan should not extended for another four years, it will only be extended as you granted the extension to 2011. Let me add to the hypothetical. lenihan can't get the last pieces of this project built before 2011 and at the time his site plan expires he goes back to your department with the same site plan again. What happens then?

Well, I would look at the application, whatever he would turn in, as it comes through our completeness check it would be sent to the committee, if he's asking for grandfathering, and we would review that based on the information that he's provided. It's a very difficult decision for me to make something even

hypothetically off -- I'm not asking you hypothetically how it would rule or how you would rule because I know you haven't seen this case in that way before. I'm asking for a procedural view.

It would be go back before the team, it would be reviewed. If a decision would be made either way that decision would be given to the applicant. They could ask for that to be reconsidered and ultimately that decision would come to me if there was -- if the applicant wasn't satisfied with whatever came up with the team's decision, and so it would fall to me to make that call in the end. If they were or were not still vested to operate under the protection of chapter 245 of the local government code to be grandfathered.

Spelman: okay. lenihan's point of view, his company's point of view, the primary reason for being rejected, is because of the uncertainty of what's going to happen. We might say no and then he has to go to 2011. And if we don't uphold the appeal he's got till 2014?

Yeah, I think four more years.

Spelman: for more years. If we were to uphold the appeal giving him only until and he submitted the same site plan as before and he had to go through committee and everything, how much would it take and how much would it cost from the applicant's point of view?

I'm not quite sure what you mean. -- I'm a little bit low energy. Let me see if I can rev myself up just to be a little more clear. I don't look much like paul lenihan but imagine I am. I've got this great site plan and I want to build this thing and it's about to expire. The time is ticking away. It's almost the end of the time of 2011 and I want to build this thing right now. So as soon as I expire I come back to your department with the same site plan and said here, here's the same site plan again. How much am I going to be paul lenihan, as far as time, how long will I not be able to continue working on my project while you're considering the same plan? typically we have ten days to review it initially. The fee would probably be based on the instruction of the remainder of that plan, so maybe a couple thousand dollars and whatever the printing costs are to make that decision. So that would be the cost of finding out, I guess, what that decision would be, whether it was grandfathered or not. And I do want to clarify one thing. He doesn't have to have it all built by that deadline.

Spelman: right. he has to have a site plan. The next step would be then building permits. And so he has to pull the building permits and actively pursue construction under those building permits for the full remaining building. If he does so he can actually go beyond that time period as long as he doesn't lapse in work every six months or so.

He does need to pull permits on all the remaining buildings, though.

All the remaining buildings for those uses to keep his project alive and show work by calling inspection and continuing construction, and theoretically it could take as long as it takes to complete those buildings so long as he's actively pursuing it. I do want to clarify that. but he does need to pull the permits between now and a year from now which means he needs to secure financing and presumably do a bunch of other things.

That's correct. but from your point of view, the only additional -- we got \$2,000 in additional costs starting in 2011 after a site plan expires. \$2,000 In ten days? it would be ten days to come and do completeness check before it would get to the committee to review. The exact cost I'm not sure how many buildings he would finish, but let's say 2 to \$4,000, and then whatever his costs are for probably copying and his time for and his staff to copy. we're dealing with a site plan which has already been submitted twice of about. He submitted it once and then submitted an identical site plan in 2006, am i right? We got all the information, we don't need to copy it again.

We may need to copy, because you are dealing with new construction, new buildings. He may be able to reuse some of the information, some of the pond designs. You know, our erosion control standards may have changed from the last submittal so he might have to provide different detail.

Spelman: okay. So how long would the elapsed time be between when he submitted the site plan for the third time and when you could give him a determination based on your own -- your own -- like I said, it would be probably about sometime between 10 and 40 days we would probably give something in that time. From the time he gives us to go through our completeness check.

And at that point he would be able to continue --

no, if his plan expires and he's submitting a new application, there's though building permit that we could issue. That would just be the process where he might get an answer from us to see whether or not he could keep going. but he has to go through the whole site plan review.

He has to go through the whole site plan process. is there any way we could wave that? certainly council could consider a process of changing the ordinance to waive that for -- a continuing process. I don't know -- we have a site plan which has been submitted twice in exactly the same form, site plan review process -- we have two opportunities before us currently if a project meets code generally, then it would come in and ask for what's called a management growth agreement and then council would have the opportunity to grant a certain amount of time. And then also we have a site plan extension process. In this case like I have granted a one-year -- granted a one-year extension and what's before you now is a request for additional time.

Spelman: thanks. council member cole. I was going to suggest that council member spelman bring the site plan extension resolution to council member morrison. that being said, I think that we have to recognize as a body that we are in difficult economic times and it really is a sad situation when a developer or business community comes before us and they're asking us yet again for a site plan extension because they simply have not been able to move forward on a project. We heard the standards that were set out for us to overturn a planning commission recommendation, which are very, very high, and I was also very, very pleased to hear the applicants say that they plan to preserve the trees and also that council member riley was out last night on his bicycle. So that being said I'm going to move to deny the appeal and keep the planning commission recommendation. council member cole moves to close the public hearing and deny the appeal. Is there a second? Second by the mayor pro tem. Further discussion?

Mayor? council member riley. I've been troubled by this case. It has taken some time to get familiar with exactly what happened. I think I feel indebted to the appellate ant, hawkins for, for having raised issues about our grandfathering process and i think it's been a healthy process for us to go through this discussion and get a better handle on exactly what that process should be and in particular how we did not exactly follow that exact process over the history of this case. hawkins makes a very reasonable request and argument that we need to have a coherent, meaningful process, and I think appeal and I think we need to work on getting that process right. I think this case points out the respects in which we haven't done that very well. All that being said, we are constrained by state law. That's the underlying problem that we're struggling with here, that there are grandfathering rights under chapter 245, and I am satisfied, as much as I would like to avoid the development of that last lot on this tract, I am satisfied that there is -- that staff has correctly determined that there are grandfathering rights here and that -- and so I will support the motion because i think -- I think we're constrained by state law in this case. council member morrison? thank you, mayor. I appreciate the good work that the developer has done in working with the neighbors in putting together an area that does have, you know, trees and things like that. I do think that this is a situation where it can make a significant difference that these trees be there or not, and the last lot is an important thing. I'm very troubled by the procedure notice failures for the 2007 site plan application, because, in essence, the notice requirement in our code were not followed because -- and while it might seem like a technicality, they weren't followed, and I think it's a very poor precedent to say, well, that's okay, we can just say that the site plan and everything is okay, even though we didn't follow the procedures. So that raises a huge flag for me, and I know that we are -- it's not the way we do things now. We often have seen cases in front of us be postponed because of notice problems and staff is very careful about that, because it is a code issue. In terms of whether the planning commission acted contrary to applicable law, the way I read that requirement really calls into the question of whether or not this site plan was appropriately grandfathered or whether it really should be subject to sos, because, you know, if - if sos -- excuse me, if the planning commission was, in essence, extending an invalid site plan because it wasn't really grandfathered or whatever, then I think that they would have been acting contrary to applicable law. So to me the question is, was it really grandfathered, was it really subject to sos, and there's no clear answer there, what we have -- what the appellant has that he has to be relying on is a letter that says it's not grandfathered and it looks like, you know, there are other explanations that we've heard, but frankly on paper it looks like there was an administrative variance to our sos ordinance that requires us to majority of council. So to me there's plenty of question about whether or not this was appropriate, and so I think that it would be entirely appropriate to settle the question by asking the applicant to go through the process again to see if it really was -- or really is grandfathered or not and let that process work the way it's supposed to. So long explanation, but that's why I will be able to support it. council member spelman. as much as i would love to uphold the lenihan through the wringer, it would make me feel good.

I guess I do, actually. At this time of day we all look alike. I don't believe I can do that in good faith partly because the appellant burden is pretty clear. Applicable to law or regulations. I'm looking at it now. And although council member morrison is I believe accurate in stating that the applicable law or regulation that is most likely -- a decision most likely to be conferred to was the grandfathering issue, I have made the mistake of actually looking at the 1986 -- '84, '86, 1980 whatever it was site plan and frankly it looks to me like it's the same project. It's not obvious to me that the project has changed in important ways over the

last 24 years. That said, it seems to me there's no evidence available to us that that would have -- that 1704 decision was improve dentally granted by the 2402 2402 director despite there's a 2707 letter, that was poorly worded. There was a lot of cases where 2707 or thereabouts the director wrote letters that looked like that even though the project appeared to have met the grandfathering requirements. I don't feel like I have much choice in this matter. If I looked at that project and said, this has changed substantially from what it looked like 24 years ago I'd , but I can't see any evidence of that. You didn't produce any evidence of that, so I'm going to have to vote in favor of the motion. well, I'm going to vote in favor of the motion too, and all of this stuff is kind of background noise, you know, how many rain barrels do you have and how many trees are you going to save. This is not, as I said earlier, a discretionary question on the part of the council. It is, in effect, a judicial matter. We are bound to follow the law om, and we have to find -- on this, and we have to find that the appellant either made or did not make -- did not make the case that the planning commission violated the law. It's pure -- it's basically as simple as that. So I don't -- I don't think I have any discretion in that. It doesn't matter what we want. We just don't have that discretion. The burden was not made, so I will support the motion also. So all in favor of the motion say aye.

Aye.

Mayor leffingwell: aye. Opposed say no. Passes on a vote of 6-1 with council member morrison voting no. And council, I believe that there are no more items on our agenda. Without objection we are adjourned at 8:36.

End of Council Session Closed Caption Log