

## City Council Regular Meeting Transcript – 03/06/2014

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[04:04:14]

>> Cole: Good morning, I am mayor pro tem sheryl cole. We will begin today with the invocation from father wade russell, the associate pastor from st. Theresa's catholic church. Please rise. >> Let us pray.  
>> Good and gracious god, we come before you on this beautiful day. In this wonderful and diverse city of austin, and we for you the many blessings you have bestowed upon us as brothers and sisters in this growing and dynamic community. Help us to put aside our selfish interests so that we may look beyond our needs and the needs of those dear to us and seek to serve the needs of all. Most especially those who are most in need, the children, the elderly, the poor. Bless our time together as we deliberate on this day. May we be respectful of all, listen and act virtuously in everything that we do. Help us to remember that you are always with us at the center of our lives. And we ask all of this of you, god, for you live and reign forever and ever, amen. >> Cole: Amen. Thank you. Please be seated. A quorum is present so I will call the meeting of the austin city council to order on thursday, march 6, 2014. We are meeting in the council chambers, austin city hall, 301 west second street, austin, texas. The time is 10:05 a.M. The mayor is traveling on city business and will not be in attendance today. I will not be announcing his absence on each vote.

[04:06:14]

Unfortunately we have had a loss in our city family. Byron johnson's service will be recognized during proclamations today, but because we have so many city staff assembled, I wanted to let you know that there's a book for expression and condolences in the bull pen if you will not be at the distinguished service recognition. We also have the international visitors leadership program here today that represents 18 countries from around the world. Will you please stand? These are local and state officials who have been visiting around the world and are visiting with us here today. Thank you for your presence. Before we begin the following changes and corrections to today's agenda, I will read them into the record. Postponed to march 20th is item number 4, so any speakers signed up for this item will get to speak at a future agenda. Item number 6 was unanimously recommended by the parks and recreation board. Item number 23, pleased a councilmember riley as a sponsor. Item number 27 and 28 have been proposed to march 20th. We have no morning briefings scheduled. At 12:00 we will have general citizens communication. At 2:00 we will hear our zoning matters. At 3:00 we will hear austin

austin housing finance corporation meetings. At 4:00 we will have our public hearings. At 5:30 we will have live music and proclamations.

[04:08:19]

The consent agenda is item 1 through 28 with a few exceptions that are pulled off that agenda. I will go through those in a moment. First I want to read our appointments to the boards and commissions, which is item number 18, which will remain on the consent agenda. Board nominee commission on seniors, dan pruit is nominated by mayor leffingwell. The commission on [indiscernible] appointee, dr. Erica pittman, nominated by councilmember martinez. To the commission on seniors, jacqueline angel nominated by councilmember morrison. To the community technology and telecommunications commission, trey parker, nominated by councilmember tovo. About the following items have been pulled -- the following items have been pulled off the consent agenda by councilmembers. Number 24. And items that have been pulled for speakers of two or more is items number 12 and 17. At this time I'll also recognize councilmember morrison with respect to item number 41. >> Morrison: Thank you, mayor pro tem. I wanted to announce that at 4:00 when this item comes up it's the public hearing and consideration of the holly shores master plan, that I will be making a motion that we postpone the iteming in april 17th with direction -- I know there's been a lot of concerns in the community with some specific direction with the staff to work with the community in very specific ways on those remaining issues. >> Cole: Thank you. Again, the consent agenda is items 1 through 28 with those items that I just called off that have been pulled either by councilmembers or by two or more speakers. Before we entertain a motion on the approval we have several speakers wishing to speak on items that are remaining on the consent agenda.

[04:10:19]

I will recognize them at this time. Jim christianson on item number 5. You have three minutes. >> My name is jim christianson. I'm here speaking for the property owners who live on parkway, as well as my olden field homeowners resolution. I'm speaking here today regarding this plan of redoing shoal creek. The property owners below this have been at the very beginning, wanted to put the city on notice that they have a flooding problem and they wish that the city be aware that this particular action could cause some flooding. At least we put it here today on notice that should additional flooding come as a result of this we'll be back to tell you that we told you so about that project. Secondly, I'm here to talk about the stakeholder process on this. The old enfield homeowners association asked that the parking lot be removed from this project. It is a source of crime in our neighborhood. I'm head of the crime committee of the old enfield homeowners association as well as being a member of the board. We are not johnnie come latelies, we have been here from the process through the very beginning. That was our only request is that the parking lot, which is a source of crime for our neighborhood, to be removed from this project. Every stake holdner this process got something except the old hay. That's all we ask for and we cannot get any help. Like I said, if this is the way the stakeholder process works, then it failed because it didn't consider anything that

[04:12:20]

our neighborhood association requested. The parks department will tell you that, oh, well, this can be taken up in the pease park master plan that is now under study. Well, the one person who objected to this was the parks department. They were the ones who insisted that the parking lot remain, which I don't quite understand since parking lots and -- if this is a water quality issue, why are we adding or having the parking lot here on water quality issue? As I said, we were at the very beginning of this process, you have a letter back in 2012 from our then president jason nichols who did tell you that the board had requested that the parking lot be removed as part of this process. As I said, you probably will hear from parks department that well, this can be taken up in the pease park master plan. We've already had a stakeholder process. The pease park conservancy ask that it be removed. The old enfield homeowners association asked that it be removed. The only stakeholder who did not agree to have it removed was the parks department. So why go and wade through the pease park master plan when it's going to end up with the same result? The parks department is not going to support the plan. >> Cole: Thank you, mr. Christianson. Is there anyone here from the parks department that would like to respond or give us a brief update on the items mr. Christianson is talking about, the plan for shoal creek? And pease park? >> Sarah hensley here from the parks department as well as another staff member. There are two things going on here. We have a master planning process going with our partners at the pease park conservancy. They're looking at all sorts of things up and down this creek and we're still open for suggestions and ideas. The other part of this is the watershed project that there is no more

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comments because it's a project that is underway and restoring the bank there along the creek, which is severely degraded. In this case it was negotiated that we would reduce the size of the parking lot as part of the watershed project, not increase it, but not eliminate it. And the mere fact of doing that is I've made trips over there myself over the last year to see how heavily this parking lot is used and it's heavily used. As a matter of fact, this past -- it's my park day weekend, it was used not only by volunteers, but by park users. If we don't have some small areas for people to park then they're going to continue to park along the ring of this area, which is did he grading the road, as well as creating water quality issues which thus begins the issue with our watershed department. So it's our recommendation and continues to be our recommendation that we leave a much reduced lot there, still protecting that large tree that's there, so that we have spaces for not only the residents who might want to drive over or walk over, but for people who come to this park, which many do, outside being a resident. It is a district park. So we do get a lot of visitors not only from around other areas in the city, but other people who come to visit pease park. >> Cole: Thank you. Councilmember morrison? Councilmember riley? >> Riley: I appreciate the information. I visited with staff about this and they say they expect that parking lot may also be used for staging during construction on the watershed project, is that correct. >> That is correct, absolutely being used for staging. Watershed is actually helping us to reduce the size. We're working hand in hand with watershed department to make sure that when they finish their work then they will be reducing the size of the lot, but leaving some spaces available, including accessibility parking for our people who need to get into the park, so that we are able to provide those spaces. >> Riley: But

we are still open to revisiting this issue during the course of the master plan? >> Certainly. It is a topic that we don't want to not listen to our neighbors and our friends that live right there, but we also have

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to represent the city as a whole when we're looking at the use of this park. And it is a district park and it's heavily used by other citizens and visitors. And to not be able to provide adequate parking, especially parking for people that may have special needs, is limiting us in our ability to serve. >> Riley: I have two other questions that relate to the watershed issues. First is the general question about whether these improvements might actually raise the risk of downstream flooding as I think we just heard from the speaker. And secondly is does the continued retention of that parking lot exacerbate the problem? >> To answer the first question, I'll ask you to repeat the second one. The downstream flooding issue, we go through extensive engineering analysis to ensure that the improvements were held to certain regulations within the city of Austin for a no adverse impact scenario. So we've gone through extensive engineering to demonstrate that there won't be additional water and flooding downstream. And can you repeat the second question, please? >> Riley: The second is how the parking lot factors into that. The point was raised that keeping the parking lot there may actually make the flooding issues worse. Have we considered that? >> That's always a consideration. Different land uses around the park. Actually the fact that we're reducing impervious cover that drains to the park would actually result in the opposite, that we're reducing the amount of runoff to Shoal Creek or just the rate that it gets to Shoal Creek by reducing the footprint. We're also resurfacing that parking lot with a porous pavement that allows water to infiltrate instead of skirting along the pervious surface quickly, so the parking lot won't be contributing to flooding issues because it will be pervious pavement. >> Correct, reduction of size and repurposing of the surface. >> Spelman: Mr. Christianson's argument is that the parking lot, no matter how valuable it may be for people who use the park, is still a source of crime in his

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neighborhood. How do you respond to that? >> I'll refer back to the parks department here, but from what I understand -- >> councilmember, I'd have to -- let me go back. I looked at the crime statistics and I believe our park rangers were looking at it, and our numbers literally were -- it was more of nuisance calls, not particularly what they would call crime. And we've asked for a beefed up patrol and our police partners as well as our rangers have been able to do that. Now, if there's continuous crime that's going on even now that's causing problems, I'm honestly not aware of that. And we can address that through asking our partners in the police department to help us with -- they have many creative ways of helping us deal with those kinds of things. >> Spelman: Sometimes it won't show up as a call in the parking lot itself, it may show as a call from the neighborhood because somebody is walking in the parking lot and walking up into the neighborhood to do burglary or something like that. I think that's what he's probably getting at. Is there -- it sounds like you're engaged with the park patrols and the police department. >> Absolutely. >> Spelman: Is there anything in this crime that includes you taking crime prevention actions other than taking the parking lot out? >> No. We can look at other crime prevention methods and we don't usually do this, but even to the point of automatic lights that click on at dark, which would sign --

they have new ones that will shine just into the area. If someone is coming in there for purposes that shouldn't be there after a park closure, then the light will come on and usually they won't stick around too long. >> Spelman: Burglars and auto thieves really hate the light. They don't want to be seen. That sounds like an excellent why. >> We can look at all of those kinds of things. >> Spelman: If you would do us a favor of talking with the old enfield homeowners association and talk to them about what crime is emerging from that parking lot, that will give us a better sense. >> We will find out what they're talking about. I'll get back with our police partners and find out what the crime statistics are now versus when I asked about four months ago. And we will try to address through help

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through the police department, our park rangers and the neighborhood come up with some ways to reduce the non--- you want desirable activity. >> Spelman: Thank you very much. >> Cole: Thank you further comments? Item number 22, jane morgan? James morgan. >> Good morning, everybody. I'm here to discuss about austin possibly taking the bid for mls. Mls is probably one of the most intariking sports in america at the moment for one specific reason. It's growing. And it's growing rapidly. It creates a specific environment where the great cities can actually embrace their creativities, become part of the activity and embrace a sport culture that is progressive and moving. I think the city of austin would a perfect city for this growth. If you look at our demographics, we have two key factors that have -- two key factors that really help succeed for any of the professional sports teams, like cities of portland and seattle we have a growing tech culture and a more youthful culture, which is pushing for them to -- pushing between 30,000 and 64,000 fans showing up for each game. We actually have the same demographics of that, but we also have a large hispanic based backgrounds that pushes teams like dallas and in houston to actually fill the stadium. But point of that, saying that we can fill a stadium and fill the fan base, is that we can have a chance to really build more strong leaderships within the east austin community. And that's where I really see this as a real chance for our culture to do. We have in east and north austin we have a

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large hispanic population who need positive role models and soccer is one of the main key successes that we can really use to build proper leadership roles because unlike most other sports, the collegiate college players who actually become mls players generally come from schools such as duke, harvard, yale. They generally have zero criminal backgrounds or criminal accidents such as you see in the n.F.L. And other major sports. And they really have a chance to build these positive role models that you can proceed by going through education and pursuing sports and combining the two together to become a bright citizen. I see this a possibility and a chance really for austin to help mobilize our disadvantaged youth and hopefully bring a professional sports team to austin, texas. >> Cole: Thank you. I appreciate your comments. We also have signed up clayton matthews, michael wilkes and brandon balladin, not desiring to speak, but registered in favor of the item. Council, that concludes our consent agenda. Any other comments? Councilmember tovo? >> Tovo: Just one quick one. I wanted to mention, we didn't have an opportunity on tuesday to talk about the saturday work session on our agenda, number 26. I

wanted to simply say that staff after our last saturday meeting open council session prepared kind of an of a action report with some good suggestions about how to do it differently. A little differently in the future. So I just want to encourage them to implement some of those suggestions. I think they're very good ones. So assuming this passes on our consent agenda I hope the staff will follow the recommendations that they've outlined in their memo to us last year. >> Cole: I'll entertain a motion on the consent agenda. The consent agenda has been moved for approval by councilmember spelman and seconded by councilmember morrison. All those in favor say aye? All those opposed say no?

[04:24:24]

The consent agenda passes on a vote of six to zero. >> Martinez:, IF I Could take a moment of personal privilege before the staff leaves. As you saw in today's paper and as we've seen over the last 24 hours, the city of austin was awarded almost \$12 million from the federal government to help with the buyout program and the mitigation in south and southeast austin in the dove springs area. I wanted to thank our watershed protection staff, our government affairs staff led by john hearneer team and most notably the mayor who has made several trips to washington this year. We applied for only three million dollars this year, so having been awarded almost 12 million, which is four times increase of what we asked for, is sorely needed and much appreciated. I wanted to thank all the staff for their hard work and the city manager as well. >> Cole: And I echo that expression. I actually tweeted it. Thank you. That concludes our consent agenda. We have a few items that we have to take up off consent. Item number 12 we have sola vega. >> High pressure to speak about the austin forestry plan. It's much I am due to the environmental board recommendations. Most of the recommendations from these four people were as recommended by the

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environmental board are included now in the plan, but thanks to nick and his efforts. And specifically councilmember cole, you asked last time about watering trees. That is in there, but it's due to the effort of these people. Before it was just about conserving water. Can we have the next slide? The plan is for public trees, it's a first step, not a comprehensive plan, not a management plan and does not meet the city ordinance requirements. The heritage foundation cannot support it because there was no meaningful community involvement. I know there were several public investments, but nothing came out of it it. The plan was already written or at least the policy elements when the comments were taken, the public comments have been removed from the plan and have been posted online, but already two comments have been removed from the online file. There's no adequate valid data, so therefore no, sir no scientific decisions, no clear executable goals and no quantifiable objective metrics. More importantly the plan does not meet imagine austin goals. It's a divisive plan, not seeking the unified corridors. It separates public from private trees. Creating an urban forest plan that identifies tree canopy goals and establishes a canopy. This is the urban forest. This plan is only a tiny slice, a first step, but it's only a step. The process was done backwards, there was no teamwork. And here is what happened, forestry of the working group get together to write a plan, then the 14 departments will rang rank the plan so you end up with 14 management plans, one for each department. And an internal departmental

group. The council made a [indiscernible] for private trees. Other cities work together with the community. Everybody together writes the plan and there is one single comprehensive management plan that includes the public trees and private

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trees. Private trees are included in the form of rebates and [indiscernible] and the city legal says that is okay to do. This is an example of the goal. In the plan very vague. In other plans it establishes it and reach it and this is how you reach it. You plant this many trees to this date. These are the performance measures in the plan. I it's subjective. The performance measure citywide is empty, all the rankings were deleted. This is incomplete work and there is no dead klein to complete this. This is the performance measures from portland, numbers. That's an objective plan. Thank you. >> Cole: Thank you, ms. Vega. Next we have michael folsom. >> Hi, I'm from the austin heritage tree foundation. First of all, I would like to thank the urban forestry board and the board for their hard work in putting this together. Having an urban forestry management plan is very important. There are many benefits to the urban forest. You're aware of those including air quality, water quality, etcetera. And also having this plan is an integral part of the imagine austin plan. While this is a good effort it could be much improved if a couple of things were added to the plan. Now, these items were sent to you in an email, but I will just touch briefly on them. Council or the environmental board development committee should develop a strategy to develop an urban forestry management plan for private trees within six months of the approval of this plan. The strategy could include that the city arborist, watershed would work on this to lead the effort. A joint committee, hiring a consultant and so on.

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[One moment, please, for change in captioners] >> good morning, mayor pro tem, council members. City manager. My name is gus pena. I met her at the meetings when

[04:32:29]

she brought up viable issues about certain trees, etc. I have known pat fuller when she was the chief of police, so we go way, way back. It has always been -- our contention as much public participation from all stakeholders from all parts of the city. And we like participation from east austin, southeast austin. It's very important. So there's some issues here that need to be addressed and recommendations need to be implemented. I'm more into law enforcement, education of it. But this is a key, critical issue because it affects the quality of life of all people. I'll leave it at that and hopefully we can get more stakeholders' participation. >> David king. I know I saw david. There you are. >> Good morning, mayor pro tem, council members. My name is david king. We're doing all we can to save the trees we have there. They are suffering from the drought and increase density in the area. So we are doing everything we can to preserve the trees we have. I don't know of anyone who is a stronger, more knowledgeable supporter of our trees. It concerns me that comments she has taken time to provide to the urban forestry board are not in the plan. I would ask that you ensure those comments are part of the public

plan. And that there's a deadline set for that plan to be reviewed, including those comments, by the department, so they can incorporate those strategies

[04:34:30]

into their plans. That's how it's going to work. If we don't have that in the process, then we lose that opportunity. So, please, make those changes and incorporate their comments into the public plan. Thank you very much. >> Thank you, david. >> James blithe, are you here? You have donated time to tom hayes. It's your turn to speak. So, tom, you have a total of six minutes. >> Thank you. I really appreciate the opportunity to speak to the city council and mayor pro tem and the city manager and other staff. As y'all have probably seen my comments over the last few months, I have quite a few mostly technical comments, but I'll try to be brief and summarize things. This first slide is a review of 12 plans, including the austin plan. The other 11 plans were recommended by american forest and other folks who have implemented plans across the country as some of the better examples. As you can see, austin is the only plan that does not have city-wide inventory data and analysis. Or even a means to accomplish that. It's the only plan that has not addressed canopy and gif inventory and targets. It is the only plan that does not quantify co-benefits city wide. As you can see, most of the other plans apply to both private and public trees also. The next slide. I only have two slides. This is just a very brief summary of some of my previous comments. What we have is really an outline of a strategy. I don't think it's even a

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strategy, and there's so much to be done. If we are going to have 12 or 14 different city departments collecting data that's going to be comparable city-wide, there should have been protopolls included in this strategy. There aren't any. It's going to be many years until we have a real plan that's going to affect management. I think there are my reasons to do these things but I just listed four of them on this. For all of them I have proposed that we have a strategy within six months and we have an implementation of an actual plan within two years. This should be very doable. To do the canopy analysis should only take a couple of months. There are many things that could have been done quicker. It took three years to get to this strategy outline. We should be moving faster. It's been over 20 years since it was asked to be done. So, I guess my four main components of what I believe should be a comprehensive plan for private and public trees, the first one is it should include private trees because they are about 95% of the urban forest. It just -- you know, it just is important if we are going to manage austin's trees as climate change affects us, we have to know where we are and figure out where to go from there. And that's related to measurable objectives. There are no numbers in the plan. The numbers that are in the plan are incorrect. They are very biased, very limited, no statistics can be applied to them. As I pointed out in my previous reports. To be able to have a public open public plan process.

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We need to have objectives that are quantified, that the citizens can look at and have their opinions and



input. We cannot measure success unless we have quantitative objectives. All the other plans have quantitative data and objectives. The next thing is, as I mentioned a little bit before, data. The very first step. There's no data in this plan. For a strategy, you have to know where you are before you know where you are going to go. And the last thing about having a canopy plan, which I worked a lot with the state -- state agencies of texas. We do a lot of this kind of work, but throughout the country, plans -- and I'm on some national committees and that sort of thing, but converting the canopy-based plans because you cannot economically have a plan based on individual trees. This is not a plan for an arborist. The reason for canopy-based plans is you have to be able to look at a plan and you can't do that with individual trees. You just cannot afford it. That's why other cities are converting to con -- canopy-based plans. They would each have canopy goals and have measurable objectives. That's where the plan should be. So I think that's about what I -- actually I have one more thing.

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If you look on page 63 of the draft plan that you have. It indicates that plan implementation must have measurable objectives. Performance will be measured using annual performance report card that uses such measures as canopy cover, species, class and age. Such measures seem to be outputs of the data collection on the urban forest. So I have two questions. >> Finish your talk. Go ahead. >> What is the baseline data that these will be measured against in five years? There's no plan to collect data. And the second question is, if the city-wide canopy cover data is to be used as canopy goals, as it stated, how will the city-wide canopy data, which includes private trees, hopefully, be meaningfully reflect the public care goal and alaskas. If you have a canopy-based plan. >> I think we got in your last two questions, but I think council member spelman may have a question. >> I was going to ask that he have a chance to ask those questions. >> Thank you, mr. Hayes. >> Next we have mr. James rooney. >> My name is jim rooney and I serve as a forester service and I oversee her operations in central west texas. I'm here to represent the forest service in support of the urban forest service.

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We believe the master plan will create an effective foundation which manages urban forest. We offer our continued assistance as this plan is implemented, evaluated, and adjusted. We look forward to our continued collaboration with the city of austin and our staff. Thank you very much. >> Thank you, james. >> Bradley hamill. Not present. Craig nathan. >> Hello, council. I'm here representing the austin sierra club. And I would just like to say that I spent a lot of time the past year on the ground trying to defend some of our trees here in austin. I'm one of these guys who will usually be in the ditch. If there's a ditch to be dug, I'll be down in the ditch. And there are a lot of issues with trees. And these issues seem to be growing. Sierra club gets calls all the time from people with issues about trees. There are people who aren't any members, they say the sierra club will care about the trees, and we do. And this is not -- you know, you could argue that some plan is better than no plan, but what happens is some people think we have a plan so we're okay. And what I find out is the devil is in the details. When you're going to all these meetings in the urban forestry board and trying to defend trees and what is in a plan is what people are following, and if that's not helping the trees, then us people in the ditch got to dig awful hard and awful

fast to try and keep our trees safe.

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Sierra club for a long time has believed that we should base our decisions on data. And this plan just doesn't have that. I mean, there's some nice things in it and it's moving in the right direction, but if you approve this now, the assumption is we have a plan that's going to work and protect our trees and I don't think that's true. I don't think this plan will do that. What I would like to ask you to do is listen to some people who know a lot. Tom hayes, when I was president of the autobon society, we heard about tom hayes. He did incredible work for protecting woodpeckers in a forest over there. I heard about it before I ever met him. I think you should look at what he has to say very closely. Thank you very much.

>> That concludes all of our speakers on item number 12. Any discussion? >> I wanted to thank everyone who has been involved with the plan, the staff and many community members. Dr. Vega and hayes. Several of our board has spent time working on this. And they have made some very good suggestions. One of the direction -- I'll move approval an then I have some additional direction to provide to the staff. >> I'll entertain the second. Move for approval by council member tovo and seconded by spelman. >> I had asked some questions about data collection and when that would begin. And we have heard some interest and the good suggestion of several of our community members that when that data collection is available that our boards take a look back at the plan and make any suggested recommendations or realignment that might be necessary. So I would like to ask staff if they would, when they have that data collection complete, and I think 18 months was the targeted

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end date. If they would return to the environmental board and to the urban forestry board and invite any recommendation for realignment that may be necessary. So that's the first piece of direction. And then I would also like to say that it is my understanding that the environmental board, or at least several members, also have some of the concerns that have been heard here today. Particularly about private, about the need to really look at our private trees and do additional work on that. It is my understanding that at least several members of the environmental board intend to do some work on that and perhaps follow up with recommendations for some action that council might take with regard to that issue. So I really appreciate the concerns. They're not being dismissed, but I think we have some avenues for addressing them going forward. >> I'll just say I'm pleased that we are going forward and I share the concerns about the private trees that I expressed last week during the briefing, but I do think the plan should go forward and a lot of good work has been done. Council member spelman? >> I agree with everything council member tovo said. I don't always but I do today. And I would like to ask staff a couple of fairly small questions if I could for just a moment. >> Mayor, council members, I would be happy to answer any questions. >> It is my understanding that a lot of work on data collection of our politic -- public trees are going to be done by the operating department. It is going to be done by each department working together. Mr. Hayes has raised the concern that if they don't know what they're looking at they are all going to do it differently. What are we going to do to ensure quality control? >> Data collection is the first action listed in the plan. A year and a half following the

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adoption of the plan, there are tentative plans to begin that in the spring and summer. And that data will help fill in that baseline of known gaps where current data gaps exist. You know, data collection is great. I'm a huge fan of data-based decisions. And those will absolutely help make management decisions. But this isn't a management plan. It's a strategic plan. And unless you first ask the question or present the problem that data will solve, data collection is not useful. I think this plan sets the framework for what data is important, what data needs to be utilized, and how is that data going to be used to make decisions. I absolutely agree that data should be made available as soon as it's collected, to help staff in the urban forestry board to make improvements based on this plan. >>Spelman: I agree with everything you said. We're talking about a high level of strategic plan. It's not a tactical plan of getting down in the weeds, but we will be collecting information from 14 or so departments that have trees on their property. And it seems to me that if they had instructions as to here's what we're looking for, here's how you collect that data, here's how you report that data, we're going to come back with data that we can use. If we don't, we might get data we can use, we might not. What can you do or what can we as a city do to ensure that we actually come back with an inventory or a canopy as to better something that we can actually do the next step and come up with the tactics to be able to support our forest. >> I think it is important that data is collected in formats easily accessible to all departments. One thing that was stressed and

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included in the implementation. Each department used data differently, but the initial data for this plan, all those 14 departments will be utilizing, should get them in the right direction. There may be additional data collection that departments wish to include as part of their individual plans based on their unique missions, but the first round of data collection in the first 18 months should be able to be utilized by all 14 departments. >> So if one utility is collecting data when they report something to the electric utility they ought to be able to talk to each other and what they mean. They mean the same thing from each utility. That's going to require some work on your part to come up with a protocol. Here's what we're looking for, here's what's going to be reported. Here's what the data base is going to look like and have the information from all those 14 departments. Are you going to do that or your staff? >> Yes, sir. The standard of care for trees and plants were adopted by the urban forestry board and that includes data collection standards. We will utilize those and incorporate austin-specific data that we would like to collect in addition to those best management practices for data. >> So there's a national standard and we're going to find a way of making it clean and easy for each of those 14 departments to follow. >> Absolutely. >>Spelman: A lot of questions have been raised and in the extensions to it, we are going to do a better job with public outreach. Particularly, if we're going to be moving in the direction of having something, maybe at a high level, with respect to private trees. Do you have a plan for that? >> There is an implementation action in the plan that sets out

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that the responsible parties for addressing that should address that issue within two years. If there's -- this plan is the product of the assignment at hand, so it's the current scope of the urban forestry board. I do think that addressing private trees is important and it sounds like there's work being done. I think that should continue, but that's really not -- it's not the jurisdiction of currently the urban forestry board, but it is important. >>Spelman: Since it is not your job description, you are doing public trees, you said the affected parties are going to do this in the next two years. Who are they? >> That's not for me to decide, but if my colleague would like to address that, I would like to give him the opportunity. >> >> planning and development review. The question pertains to addressing private trees? >>Spelman: Yep. >> It is a recent notion that the environmental board has addressed. They have formulated a sub committee within their development group to look at the possibilities of incorporating a plan that would address private property. >>Spelman: Okay. >> We have only met a few times and it's in its infancy. We are looking at what a plan would include and what it wasn't include, but we have only met twice in the last two months, so it's just a process that has commenced. >>Spelman: They said 95% of all the trees were on private land,

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not public land. There's a lot more privately held land in Austin, it seems important for the health of entire forest that the private tree issues are dealt with. Although it's my tree, what happens to my tree on my land obviously has an effect to everybody else. The forest is a unitary thing. It seems important. Do you think you will be able to come up with some reasonable things for the city to do to address private trees at some point? >> It's tough to say, but I do believe that there's significant interest in the community and from the environmental board members. I will continue to pursue this. Because of the majority of the benefits that are associated with the community through these trees, so we're looking at what are the ideas that could be implemented through a plan that would incorporate private trees. As was mentioned, the structure of our urban forest and what does it look like, how many types of trees do we have, what's the health of these trees. There are items that we talked about the evaluation of the entire urban forest. If we wanted to monetize all of our trees as a community, what's the value to the community? Are there interests pertaining to education and the promotion of our urban forest? Understanding trees and what role they play within our community. Those are three significant issues that have gained some traction in the environmental board sub committee and I imagine there will be quite a few more. >>Spelman: Those are consistent with the objectives done by other cities who have private tree developments in their forest plan; is that right. >> There will be some consistencies. I think those are broad enough to be incorporated, but we haven't looked at what a private

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tree plan would look like compared to other cities. >>Spelman: We haven't had a chance to look at them to see what we can take and what's consistent with state law, things like that. >> I expect that would be a task for the sub committee of the environmental board that we can work with them to look at lessons learned from other communities. >>Spelman: Is there anything the seven of us can do to assist you in

moving that direction? It seems to me that's a really important thing which we haven't done yet. >> Thank you. I -- of course there would be an opportunity to support any type of proposed plan after we have a chance to identify what our goals would look like in a private property plan. I suspect that would be channeled through our city manager to city council for your support at that time. But my understanding is that we still have quite a bit of issues to tackle prior to proposing anything. I think we're still months away from formalizing what a private plan would look like. >>Spelman: I think the politically correct word is challenges. I think that's fairly safe these days. >> Opportunities. >>Spelman: That's a good one too. We don't know what options are available for us to try and improve the forests on private land and that's something that you are going to have to work through. If you already have the authority to do that, you are engaged in that, and from our point of view, if we were, for example, to direct you to do that by a certain date, you would do your best to try and get it done by a certain date. Would that speed things up if we carved out some space and said,

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michael, we want this done? >> Of course it would. >>Spelman: That's good to know. I appreciate that information. >> I also appreciate that information. Any further comments, council member riley? >> I would to thank you for all your work on this. I want to thank all the citizens who have weighed in. This is an important effort that has been long anticipated. Obviously the big question of private trees is still out there. I understand the environmental board sub committee will be meeting next week and continuing the conversation about how we can address that issue. I want to focus in particular on the question of data collections since that seems like an important first step with regard to both public trees and private trees. Now I understand that this plan gets the gears turning towards data collection on the public trees. And I want to get some better sense of how we're going to approach that with respect to private trees. It seems like there are a number of ways that that problem could be tackled and from your comments, michael, I gather that the environmental board will be looking at other cities to see how they have approached that problem. And my sense is it may be that the mechanisms we have in place for addressing public trees could be helpful as we get to inventorying our private trees. And I just want to confirm that and confirm that to the extent that there are additional steps necessary. And that would be, I gathered from michael that it would be up to council to provide the direction to take those additional steps necessary to compile the data base in whatever form that the environmental board might recommend regarding the urban canopy, including private trees. Is that a fair assessment of where we're going on that piece of the problem, michael?

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>> I would like to take a stab at that. The data collection planned for this summer, we are working with the city arborist office to include private data collection as part of that plan and the sampling methodology will be such as public and private trees can be looked at separately, but as long as we're spending the resources to do a data collection effort, it just makes sense to include other parties that may have value in that data as well. I don't know if michael wants to add anything to that. >> Before I hear from michael, angela, do you have a sense of what milestones we should be expecting? Do we have

a particular time-frame by which we expect to have concluded that inventory of private trees as well as public trees? >> An inventory, when you say inventory -- >> or data collection effort in whatever form that is. I understand we will be doing some of that as we collect data on the public trees and I just want to get a sense of what game plan there. When do we expect to be -- will that represent a complete assessment of trees in the city? Or if not, then what would be the timetable for getting towards a more complete assessment? >> The goal is 18 months to have data collected and in a format for making management decisions. If you include private property, you're talking about a lot of land, a lot of data collection. And the best time to do that is dependent on the season. You can only do some kind of data collections when the leaves are on the trees, for instance. So it's going to be a long process if we want the right data, comprehensive data, I think it's important to recognize what data -- what the data is going to be used for,

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what questions are intended to be answered with that data. And we have milestones in place in the plan for using that data to develop baselines, benchmarked against other cities, do analyses of what our gaps are in managing that resource, so we do have those questions ready to be answered. And we expect those -- the data to be ready within hopefully 18 months. It's an ambitious goal, but -- >> and you mean that within 18 months we are hoping to have data on the entire canopy including private trees as well as public? >> Yes, sir. >> Okay. In recognizing that that is ambitious and more time may be needed. It's good to hear and I look forward to your continued efforts on that and that continued help from the environmental board and all the others who have expressed an issue. >> I understand the environmental sub committee is working on this and you guys are helping them along, to what extent do you know what the next step would be after the data collection? >> For private trees? >> For private trees. >> I'm going to let my colleague answer that one. >> I need to divide your question into a couple of parts. Since we're just assessing right now with the environmental board of what a plan would look like, data collection is just one of those notions that we're assessing. In addition to all of these discussions, we are currently collecting data at this point. We started collecting six months ago through initiatives to look at our green infrastructure, so we have already started collecting that data.

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It's always been my perspective with that data, we will be better to make decisions whether we are managing land or managing trees, or creating a master plan on what to do on private property. So they're kind of working simultaneously. And so to answer your question directly, I just needed to break it into two different sections. >> I guess what I was getting at, I would think there may be some work that could be done concurrently that wasn't have to wait for the data collection, the 18-month period. Especially in light of the drought that we're experiencing in many neighborhoods, losing trees. Information that we could get out or recommendations that we could follow in a shorter time-frame. >> I agree. They will be concurrently. Since we have already started meeting with the environmental board, we will continue to meet and define what they feel is important for a private tree care plan. >> Thank you. Any other comments or questions? We have a motion and a second on item number 12. Is there

any further comments? No. >>All in favor say aye. >>Aye. >>Opposed say no. >> That passes on a vote of 6-0. The next item is item number 17. We have two speakers. Gus pena. >> Mayor pro tem, council members, mr. Mcdonald and city attorney. My name is gus pena, I am a native of east austin and item number 17 has to do to add a segment of a main road to the

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streets having a maximum street of 20 miles per hour. I was called by three parents and I asked them, you know, why are you calling me and not the city? They said you are heavily involved in many issues and I'm looking at the count of the pedestrians that were counted on september 2013. And I do have a difference of opinion. I went there and counted the traffic myself. Students and parents. And so this is a needed item. Hopefully it will be approved for reducing the speed limit to 20 and other mechanisms to slow down the traffic. We need to be sure the safety of not only the parents, but the children, are protected also and not compromised. It's very important for the pedestrians. I thank them for calling me, although I'm not the expert on this issue, but I can read and I can count. And there's more pedestrian students crossing there. Please, please, please approve this item number 17 and if there's any flasher signs that need to be in place, do everything to protect the students and the parents and pedestrians. Thank you very much. >> Thank you mr. Pena. Next we have joe franks. Not here. I'll entertain a motion on item number 17. That was moved for approval by council member martinez and seconded by council member morrison. >>All in favor say aye. >>Aye. >>Opposed say no. >> That passes on a vote of 6-0. Council members, we have no morning briefings, but I would like to announce -- oh, we have one more item. Well I would like to announce the city manager's mother is deceased and he will not be here

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today. If you would like to express your condolences to him, that would be in order. We have one other item pulled by council member tovo. >> I think we have some speakers who may or may not want to address us. I want to point out to my colleagues that I have handed out an amendment to this item and it is in response to a suggestion that we received from one of our stakeholders that we restate our affordability goal and make it part of this resolution, which I'm happy to do. And that is, again, available on the dais. And it should be included in the second whereas. And I also want to thank austin energy staff for the process they are conducting in terms of the generation plan update, and thanks to the community members who suggested some additional public process would be useful and would help us to move forward as a city in assessing our goals and determining whether it's time to set anymore aggressive goals, but also discuss our progress on those points. I will leave it there for now because we do have speakers and I will be pleased to make a motion when we're ready. >> Item number 24. Audrey steiner. >> Good morning. We in sunny austin are in a prime position to use solar power, so why does austin energy want to expand the use of fossil fuels? They say because of costs. Perhaps austin energy decision makers, perhaps their economics are based on an unrecognized

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conflict of interest caused by their wish to defend the investments in infrastructure in terms of materials and the entire grid system that generates, disperses, manages and maintains. To convert to solar might mean the huge income they need in order to continue business could be threatened. That's why we need a task force. We need a task force that is not slanted due to false economics based on a conflict of interest, or as an article that came out in the statesman states based on the mistaken belief that solar energy is not competitive with other sources of electricity. We need a task force in order to provide the objectivity necessary to prevent the status quo from being maintained by people who might fear change and might not be able to see or accept alternatives. Thank you very much. >> Jay thomas. >> Good morning. Jay thomas is actually out today. He was not able to make it. My name is michael and I work with longhorn solar. >> Your name is not jay thomas? >> It is not. He is not able to attend, so I wanted to possibly speak on his behalf for a moment. >> I will need to, after you finish your testimony to sign up with the clerk as a speaker and we will remove jay thomas. >> Of course. It is well known the city of austin is a forward thinking city, it has the power to set trends that ripple across the nation. As austin's population and energy demand increases, issues are created regarding energy production, energy efficiency, and pollution from creating that energy.

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Austin needs to be pro active in addressing those concerns. We need to focus on clean, renewable energy. Create a push to keep our aggressive renewable energy goals and mandates. Thank you. >> David king. >> Thank you, mayor pro tem, council members, my name is david king. I heard on the -- read on the bloomberg financial news that we have this glut of natural gas and we are more energy dependent than we have been in decades. But the report said it is a temporary situation. That fracking pay for its. And it's only because the prices are high that it makes sense now. But soon enough that equation will change and then it will just stop because it's not economically feasible and then the supplies in natural gas will then diminish. And russia's supplies will be the main supplies. They will call the shots and the prices will go up. I would caution about relying on natural gas as right now it's temporarily low. The price is low, so the cost to generate power from that source is relatively low. But that's temporary and we need to consider that in the long range plans. Not to mention that it really isn't a clean fuel. It isn't renewable. So I would support this task force. I believe it's going to bring a different dimension to the equation here to allow stakeholders who felt disenfranchised, to allow them the opportunity to speak what they need to say and ensure that

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gets incorporated into the plan. And the task force, I hope that you will require it to be subject to the open records act and that they be scheduled so that stakeholders who are working during the day will have the opportunity to participate. And that the input is recorded so that the public will have the benefit of that and so will y'all. Thank you very much for your time. >> Cole: Thank you mr. King. Is rachel stone here? Rachel, I have you donating time to caleb white? You have three minutes. >> My name is rachel stone and I'm with environment texas. And I just wanted to speak in support of the austin energy



generation task force. I appreciate council's attention on this issue. As we move forward as a city, I want to make sure that we are paying attention to the 2007 climate protection ordinance where austin is supposed to remain a leader in climate protection and the austin energy has said this is not a time to be making climate goals, but as we approach accomplishing some of the goals established in that ordinance, I think it is important to acknowledge being a leading city means continuing to make leading goals and I want to make sure there's citizen input and the city is able to speak as a whole on whether or not we are making new goals, especially regarding solar and renewables. Thank you for your focus on this issue. >>Cole: Thank you, ms. Stone. Carol. >> Good morning, mayor pro tem and council members. My name is carol. I'm the executive director of texas roads repairs organization

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to save energy and I am here to support item number 24 because I think it is important to have this task force process evolve in order to keep austin as a major leader in providing energy efficiency and renewable resources in its generation plan. The last round of the generation resource plan, I participated by going to task force meetings and presenting ideas and information to the task force. As a result of that, the affordability goals were added to the generation resource plan and we got some provisions in there that had to do with making sure that we had adequate energy efficiency for rental properties and low income customers. This year, the utility is reporting on the goals that were achieved in the generation resource plan. I find we have gotten no reports on what the progress was in these areas. And there is very little emphasis on the affordability programs for residential customers. So that's the reason why I'm in favor of the task force. I have attended two of the three stakeholder meetings which were well-attended and there were presentations, but there was little opportunity to ask questions, like have any discussions, or to really look at alternatives to what are being presented right now from the staff recommendation. So thank you very much. I hope that as a result of this task force effort, we will be able to focus more on energy efficiency. Because energy efficiency is always a good idea and it is the best insurance policy that a customer can have against

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fluctuating energy prices. So thank you for taking the time to hear us speak and to create this task force. >>Cole: Thank you. Wright. You still have three minutes to speak. >> Good morning, thank you mayor pro tem, council. I want to start by thanking council member tovo as well as spelman and morrison and the rest who have indicated support for this task force. I think the meetings austin energy has engaged in has provided some opportunity, but hasn't provided the indepth opportunity for the public to engage in the planning process. I do think it is important that the public be represented, not just in the end. Of course you all will vote on a final decision, but I think being represented early in the process does have a lot of value to the public. And beyond that, I think that having a task force does provide an incredible opportunity to dig in more depth to a lot of issues that are really important in choosing or energy resources. There are some that I think austin energy hasn't fully evaluated, including concentrating solar power, geothermal energy, all of these are viable in texas although they have been underutilized and deserve more in depth analysis. Also the consequences of our energy choices need to be examined

including greenhouse gas limits. I know that we have set a limit, but that is not yet protective. It was a goal that was meant to lead us in that direction of being productive. Like wise the impact of fracking

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need to be considered in our discussion. Beyond that, I think a task force will have more opportunity to look at what is being done in other cities, states, and even other countries in terms of climate protection goals, renewable energy goals, solar programs, low income solar programs, all of this takes a lot of time and it's perhaps understandable that austin energy could come up with every possible solution and a task force could help with that. I look forward to the task force. >>Cole: Thank you, ms. White. David cortez. >> Thank you mayor pro tem, good morning, council. I would like to start off by thanking you all for supporting this resolution and I would also like to thank the staff at austin energy for putting together the stakeholder meetings. I was there for all three of them hours before and hours after. There was a good opportunity for people to learn, but there definitely was a -- an air of complicated technical policy that made it difficult for a regular citizen to understand what was being discussed. They did provide a space for people to speak directly with staff, and I appreciated that, but I want to draw a distinction between this task force and what they were proposalling to do without the task force. Austin will be allowed to come and give comments following a presentation from austin energy on the scenarios. Now that is great, we like that and we will have a lot of people there for it. But it's not a deep dive like the task force will be. We want to see an additional process like this task force as my friends as echoed, and we

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think it is going to be a tremendous benefit. I will ask you to refer to the letter that my colleague sent you explaining how sierra thought this process worked well in the last go round. I want to close saying that we have so much interest from stakeholders in the community, both members and nonmembers, low income folks, people in the industries, renewable energy industries, who want to be on this task force, to we are trying to work with them to create teams that can come and participate in these meetings as the public. There's a lot of demand and I think this is the best thing we can do to help meet that demand for transparency and public participation. Thank you. >>Cole: Thank you, mr. Cortez. Trey salinas. >> Thank you mayor pro tem and council members. My name is trey salinas. First after, we want to thank council member tovo and the council members for agreeing to add the language about the affordability goal and let you know that we look forward to providing more feedback for you before the march 20th work session on what this will look like and the goals and so forth. Thank you. >>Cole: Thank you, mr. Salinas. Council, that concludes our speakers on this item. Council member martinez? >> I'll let the sponsors make the motion. >> Council member tovo. >> I would like to move approval and like to thank all the community members who have provided input but I think it is going to be a short and focused time period and I think the task force is going to help us look at the generation plan and see if there are goals that should be updated and whether there are areas where we need to spend a little more attention, such as

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energy efficiency. With that I'm happy to move forward with this task force. >> We have a motion by council member tovo for approval. Second by council member morrison. Council member martinez? >> As some of the speakers mentioned, I want to thank council member tovo for her amendment. What gets lost in the community and especially in the folks that really don't pay attention to the details of what we do. Sometimes the affordability equation is omitted. No one here is proposing that we not keep our eye on that target of making sure our utility is as affordable as it can be. This task force is going to do some great work for us and they are going to make some recommendations, but all of those fit within the confines of the policies that we have already adopted that relate to affordability. I think both can happen. I think we can be a green energy supplier and maintain affordability. I want to make sure that stays in the forefront of our conversation. It is equally important and I know it is important to all those supporting the task force as well. I want to thank everyone for being here and thank the sponsors of the site. >> Council member morrison. >> Thank you. I think this task force is going to be productive. I see it as complimentary. I also want to reference the fact that the resolution dictates that we actually make sure that the task force has a broad representation, so that means that there are going to be several issues to wrestle with and within the confines, for instance of the affordability goals as well as wanting to be a leader. And so the best outcome would be

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if a collective voice comes forward that helps us balance all those goals. I look forward to that. I do have one question. I should have requested that my cosponsors earlier on. It does say that meeting will be open to the public and the public will be given reasonable amount of time to provide input to the task force. If for a reason we didn't specifically reference the subject of open meetings so that notice would be required? >> Mayor pro tem, there is not -- that was really the intent to make sure that they are subject to the open meetings act. These were some bullet points we borrowed from the previous resolution that led to the original generation plan task force. And so I'm very amenable to including that wording. >> I would like to do that and just to confirm with the city attorney, you don't see any problem with us doing that? >> The city attorney has no problem with that. >> Perhaps this is a good time to remind everybody when I moved approval of this resolution I was doing so with the amendment that I discussed earlier and distributed on the dais and this would be inserted after the second. >> Council member tovo, I would like to be clear that that amendment said that the city council adopt an affordability goal in such a way to limit rate increases to 2% per year and for ae to maintain competitive rates among benchmarked cities. That is -- it is clear that that is consistent with our current affordability goal. >> Council member morrison? >> I'm not sure if we need to be specific about the language change, just to add another element that a task force will be subject to open meetings. We could add it on to number

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five. It's a little redundant but saves us. >> Actually what we could say, all meetings will be open to the

public, subject to the open meetings act, and the public will be given reasonable time to provide input. >> Council member spelman has presented direction an amendment. Which one? >> This is a resolution. It seems to me that would be a reasonable amendment and it would -- does it cover what you are looking for? >> Not quite what I heard was the meetings will be subject to the open meetings act, it's the task force. What I heard you say was the task force that's subject to the open meeting. >> Okay. The task force will be subject to the open meetings act, all meetings will be open to the public, and the public will be given a reasonable amount of time. How's that? >> Perfect. Council member spelman has made an amendment to the resolution. Is that friendly to the author of the resolution? And a motion and second has been made. Is there any further discussion? >>All in favor say aye. >>Aye. >>Opposed say no. >> That passes on a vote of 6-0. [One moment, please, for change in captioners...]

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>> we will briefly recess this meeting of the austin city council until 12:00 when we begin citizen communication. We're not going to go into -- we just adjourned. Yeah, I just adjourned. >> So we are not going to go into executive session. >> Cole: No, you didn't think that we would be back there long enough. So I don't want to rush it. >> Recess.

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>> Cole: I would like to call to order this meeting of the austin city council. We're going to begin citizens communication, jeff crunk. >> It's good to be with you, I wasn't nervous until the 30 minutes when you iced the kicker, thank you. >> Cole: You're fine. >> Right. So in three minutes, we'll see about fine, in three minutes I'm going to talk about climate change in the austin generation process and that always seems particularly ambitious. So my first concern with process it would be to find ways to bring the future to the table as a stakeholder group with a voice. When I began action with austin beyond coal about two years ago, thinking about austin energy and climate and how those things intersect, I have learned to appreciate many ways in which fossil fuels impact a variety of stakeholder groups. What has always motivated me first is that I'm a parent and I really do feel safe to say that stowed's energy use is - today's energy use disproportionately impact future generations. With that in mind, I would suggest if there are ways to create language or add to the process, ways where that stakeholder group in the future can be represented in a way that we are comfortable talking about current affordability goals to maybe even think about future affordability goals. There needs to be a way to sort of equate these two ways in a way that doesn't always get done, it seems like to me. Second, in terms of process, I like how you all ask great counterfactual questions to austin energy officials. And I'm going to go back to two in particular. I believe councilmember tovo asked at one particular point other cities in the united states are moving out of coal. They are removing it from their portfolio. Why is it then such a struggle for austin energy to do this?

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Up to 2020. That is a really great question. I would just segue and say that the city of boulder, company,

is in fact trying to wrest control of their own public utility or create one from out of a larger utility and they are really having to move political mountains to do that. Our leadership position that really was a great leadership position in 2007-2010, not so much anymore. So that's a great question and another one that I would highlight is councilmember riley asked during the Isac discussions last fall if solar is so expensive, why do we even mess with it at all? The answer was well, we have climate protection goals. I think these are great counter effect questions to ask of officials, they help me to understand how we have gotten to this point as a community and how we can get to where we want to go. One quick thing to say about goals. Update the climate protection plan this year. Can be the most important thing that you can do other than the generation plan. You have as a body, in my view, you have an accumulated body of wisdom and credibility to do significant things that the new 10-one council may not have the ability [buzzer sounding] to do just because they're new and coming in, this stuff is hard, it's a hard slog, they will get there with their skill set they are not going to come in with it. Leave them that legacy and leave that community this legacy. >> Thank you, jeff. Adam reposa. >> Good afternoon. I've come today to ask that this council look into whether we need to change leadership and change our police chief. Several cases have really emphasized that there is a

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culture of overenforcement at the austin police department. We all know about an unarmed man being shot in the back. But what I don't know, what that ties into, is cases where a man is standing in his own yard, a man named john schaefer called the police because he shot a pit bull that had come into his yard. He was well within his rights to possess a gun on his property and when the officer asked him to take it inside and he said no, which was legal, the officer reached for it. That is indicative of a culture. A culture of enforcement. You can also look at an officer who pursues someone on foot and then shoots them in the back. It's a culture of enforcement. You look at the statesman -- statements from this recent arrest and I do think that it is somewhat benign that a jogger who get arrested for jay walking becomes such a big deal and makes international news. But one thing that is very interesting is that the chief is publicly saying, "well, if it was me, I would have arrested her for resisting arrest." It's not resisting. The law is clear when you go limp and go to the ground that's not resisting arrest. Why exactly the goal is to arrest as many people for as much as you can? I don't know. There are certain places where that's useful. Austin is not one of them. We don't need that. We are a very young, very educated community. We don't have the compton, the watts, the gang violence. We don't need the culture because what you see when you talk about a guy who gets arrested for a dwi with no alcohol, no drugs, and it's still no apology, just we didn't make any mistakes, art acevedo makes it clear that he likes to pre-empt by

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policing an enforcing as zealously as possible and when that is your culture, thing like innocent people getting killed are not accidents. They are the cost of doing business. And so I would ask that this council look into many different cases, all of which pull together a very, very unifying theme. You look at the way that occupy austin was infiltrated. You know, the goal is to maximize enforcement. And when that is your goal, you will have costs. And the costs are measured in the lives of unarmed, innocent people who

aren't breaking the law. Thank you. >> Cole: Thank you, mr. Re posa. Marlene bell? Are you here? No? Debbie russell? >> Hi. >> I'm a little out of practice with the three-minute thing, so I will see what I can do here. We hired chief acevedo in 2007 and mainly the community, what the community wanted most was a chief that wouldn't immediately come out defending officers and announce what the results were before any investigation occurred. We wanted to rebuild that trust or build it, actually, that really hasn't existed, if it ever did, not in my time. And that's what we felt we were getting. Since then, we have seen several blunders, several mistakes and in fact the exact opposite of what we thought we were getting with nathaniel sanders. Six hours after he was shot, the chief stood in that press room and said it appears to be a good shooting. On camera. They've scrubbed that from the internet since. But I know some of you were there. Daniel contreras, he was

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the -- the chief said he shot at the officer. Lie. He didn't check the video before he went on camera two hours after that shooting. That echelon building, this is not even somebody that got shot. The echelon building incident, he was there in 30 minutes with one of our helicopters announcing that he was not terrorism, way ahead of checking with the city manager or anybody. Again, without any investigation. With mr. Jackson, he won't say much about what happened there, we know it shouldn't have happened. But the -- one thing he does say, he continuously says, says in a lot of cases, don't run from the police. That comment and councilmember cole you will remember that comment got him a rousing response at the carver museum when he said people don't want me here anymore, I will leave and everybody yelled leave! He also was quoting notorious politicians. When he first got here he started talking about the silent majority. I actually had to tell him that was richard nixon that coined that phrase, he started saying the vocal minority and he thought that was going to save him. I asked him why he was amping up swat and that kind of enforcement, he called it preemptive policing, as mr. Posen mentioned, it didn't do really well for us in the iraq war, did it? Now he's clatie women's, just lean back and enjoy it because we're not raping you. One of the many things that the community says. My friend said open mouth, insert jack boot. No matter how many reforms he's brought to the department, good things on paper, when he opens his mouth he has really hurt the relationship and I think, in fact, worsened that relationship with the community since he's come on board. That half-baked preservation of life policy he stuck in the -- in a.P.D.'S general

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orders [buzzer sounding], you guys zoo enact legislation and his job is to manage the department, not the community and I want you to censor him, hold public hearings according to your job description and investigatory powers and see if we should not replace him. And I'm really upset that one of you got turned and didn't agree to this settlement that was promised the children, your job is not to define legal guilt. Your job is to say we're sorry and you guys deserve some compensation. >> Cole: Thank you, ms. Russell. Thank you, ms. Russell, nelson linder. Linder. [ Applause ] >> thank you. Good afternoon, council, mayor pro tem. Thank you, adam, thank you, debbie, for your comments. I was here about, I guess about a month ago and I happened to see your presentation on the 2013 annual report called

generating jobs. Texas revenues and investments. So as a result I gave you a copy of a document that was created here in 2004. Which addresses those very same issues. It came from the city council. Called the african-americans quality of life initiative, but also the city of austin summary. It addresses the very same things about the declining black population, but also more importantly, talks about ways to address these issues. But it's very clear to me when I look at your report, it's not in there. So if you do a forecast about this entire city, why is it that you don't have a budget to address those very

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same discrepancies and disparities that are now 10 years running? Let me tell you what I think the problem might be. I happened to look up the word economics the other day and first what it says is, it's a social science. But all your focus is on numbers [indiscernible]. If economics is a social science, what is social groups or your partners in understanding, number one, the black employment here, the wealth inequity here, police brutality here. If you are going to address these issues, they're not even in this report. You can't without having social science as part of this conversation. Let me give you an example of what I'm talking about. A fellow named thomas robert methuse, a very negative economist some folks would say. Here's what he said. He said when you talk about commissioner, he said, you have to increase the population, it means that you have to increase the subsistence. He said, also, if you want to decrease the population, you decrease the subsistence you decrease the subsistence When you talk about black folks in the city, you have never increased the subsistence, jobs, opportunities, those kind of things, that's what it is really until you address black unemployment, problems of housing, you can't stop this decline. Why do you keep sending these folks [indiscernible] these reports about all of the things the city does, you do good things, but you never address the most marginalized group in the city. How can we even go forward if you don't take your own report seriously? I have challenged kevin to come up with numbers, invest in the black population. Invest in those hard to employ, these folks are very well qualified. If you are not going to address things like unemployment and opportunities, what is the support? You keep giving away all of this money to big corporations, but for the black owned businesses who need help and housing, there's nothing in this report. So this is a social science. So in closing out, until you address these from a social standpoint and quit ignoring

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the [indiscernible] 10 years running, we can't address these issues, why is that? Are you afraid to talk about it? Final comment, I was at a great meeting on sunday night by different unions, called the principles that unite us [buzzer sounding] these are all labor organizations and until labor is a part of this conversation we're not series. So these trends are going to continue. Why is it asians increasing, hispanics increasing, black folks also decreasing, why can't you address that given the huge budget that you say you want to address these issues, thank you very much. >> Cole: Thank you, mr. Linder, I agree with your point. David van os. David van os. Tifea I. Huey. Tifea I. Huey. Ryan nacol. Ryan nacol. >> Good afternoon, I wanted to briefly speak with you guys about this new ordinance that you guys are considering about lowering the number of unrelated people that can reside in a single family home from six to four. I do understand what you are trying to do with the stealth dorms and things like that on west

campus, that makes sense. There is no equation that's the problem. You are discriminating against people with larger homes, that basically affects str's, a short term rental over a two or three bedroom they really can't do it legally. You are also going to come into a massive issue with how do you define unrelated? That's a big question. What about, is this going to turn into arizona where gay people they can't marry in this state but want to live together but they can't because they're technically not related? How about my stepbrother, my seventh cousin? I'm not saying that you guys aren't doing the right thing, but there needs to be a smarter equation about how it's equated. There's no equation, it's

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just a flat line. I would hate for this to be a bill mar or john stewart and have people looking at austin talking about us being progressive when we introduce something that's incredibly regressive, not really well thought out. I understand what you are trying to do, there's a smarter way and a smarter calculation to this. I would appreciate it if you guys would consider an alternative or a more thorough calculation to this equation, thank you. [ Applause ] >> Cole: Councilmember morrison has a question for you. >> Morrison: Not so much a question. I wanted to give you a little information. That is when this was discussed last time by the council, there was direction given to address the issue of defining unrelated so that it doesn't run into the problems that you mentioned. And in terms of same sex partners and things like that. In fact, that is responsive to a previous resolution that we said we wanted to get that corrected. So that's definitely being addressed. >> Great, thank you very much. >> Thank you, ryan. >> Riley: I also wanted to address one point about the application of the proposed ordinance. The ordinance under consideration to existing short-term rental structures. I see jerry rusthoven in the audience, you might be able to help us with this. My understanding based on the discussion when we considered the [indiscernible] occupancy reduction is what we approved on first reading would not actually affect existing structures. It would really apply to new construction and so for -- and I -- and I expect that that same -- that same approach would apply to short-term structures that are used for short-term rentals. So if you have got a structure built some time ago that is a two or three bedroom structure, that you would still be free to make that available for -- for -- subject to the older occupancy limits that allowed six unrelated people at a time, even under -- if we approved the ordinance that -- that we passed on first reading the other day, is that your understanding, jerry? >> Jerry rusthoven, planning development and review.

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That is correct. The str ordinance says you must ... Based on the first reading of the motion would apply to newly created structures. Any str on the ground today would keep the existing occupancy limit that we have today. >> Thank you, jerry. Councilmember martinez? >> Martinez: How do you pronounce your last name, sir? Nacol? I also wanted to follow up with you. If you have better suggestions, we're open to it. We're going into second and third reading. But I also wanted to give you some additional information that in a very heavy property rights state like texas, anything that we have contemplated in terms of what maybe you would be suggesting as to how to address from a zoning perspective, if you will, as opposed to an occupancy limit, we are extremely limited by what we can do because state



statute provides a lot of protection for property owners based on the zoning that they have on their piece of property and what they are allowed to build. So I agree with you, this is not the best solution. To this issue. This is probably not even going to solve the problem. But could it -- could it hopefully stem the tide? That's one of the goals. But I would recommend your suggestions, either by email or coming in to meet with us and, you know, take those into second and third reading and see if there's something that we can do better. >> Absolutely. >> Martinez: Thank his. >> Tovo: Mayor pro tem? Since we're talking about suggestions, I want to also point out that the stealth dorm working group convened by the planning commission meets at this point pretty much every friday night and they are also open to suggestions, it's been an issue that's been -- that's really been a concern in our community for several years and as we discussed in our council meeting, there are no easy solutions. But we're very hope that the stealth dorm working group is going to come up with

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some recommendations, too you are more than welcome to attend meetings and offer suggestions to that working group. Again they meet on friday evenings, including tomorrow evening and my staff member joy harden over here can provide more information about where they're going to meet tomorrow. >> Cole: Okay. Thank you. Brian mcgiverin. Brian mcgiverin? On affordable housing. >> Thank you and good afternoon. My name is brian mcgiverin. I'm an attorney, I work for the texas civil rights project. And I was here about a month ago and I said that a coalition of organizations and groups that I was representing had filed a grievance with the city, as permitted by federal regulation. Of regarding fair housing. And the city's historical failure to reverse its legacy of segregation. I noted that the federal regulations involved were going to require the city to respond and I very candidly said that I hoped the city's response or more pointedly the response from the neighborhood housing and community development office would prove us wrong. Well, I got the response recently. It's one and a half pages with a single responsive sentence. Which says: The city of austin complies with and remains in compliance with applicable federal regulations. Now, to me that is not a substantive response as required by federal regulation, it's essentially silence, in my mind silence in what of what we are alleging is effectively an omission that the city is not complying with its duties. Therefore I have filed an appeal with the office of the city manager this morning. And I hope to get an actual substantive response as a result of this appeal. This is an issue that we need to be taking very seriously because the city of austin is sabotaging itself. There are a lot of people

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who are hurting in our so-called golden age. The haves and have nots are very seriously segregated and the have nots are being pushed out. It may be that it seems like you can kick the can down the road to the next city council. It's not that long. But there will be ramifications for the policies that y'all are trying to push now. For instance, the goal to have a legacy of urban light rail. Now, building that light rail is going to require a significant amount of funding from the federal government, the fta. We know that as of august 2013 the fda -- ta is very seriously ranking cities in part based on their affordable housing. It's evident that austin is lagging behind many other major urban centers in achieving a modest amount of

affordable housing for its citizens. Let alone by implementing policies to ensure it in the future. So I would encourage you not to wear blinders and kick this down the road. Or else dreams like dreams of urban rail may end up being just that, dreams that never come to fruition. Thank you. [ Applause ] >> Cole: Thank you for your comments. Council, that concludes our list of citizens here for citizens communication. Without objection, the city council will go into closed session pursuant to section 551.071 of the government code, the city council will consult with legal counsel regarding the follow items, item no.31 to discuss legal issues related to the austin fire department hiring process, item no.29 to discuss legal issues related to open government matters has been withdrawn, also item 30 to discuss legal issues related to the

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transition to electing the council from single member districts has been withdrawn. Hearing no objection, council will now go into executive session.

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>> Cole: We are out of closed session. We took up legal issues related to item number 31. I will now recess the meeting of the austin city council and call to order a meeting of the austin housing and finance corporation board of directors. We have one item to consider. Miss spencer. Will you brief us on this item? There's miss spencer. We're calling your item right now. Betsy spencer will give us a summary of this item. >> I apologize. Betsy spencer, treasurer for the austin housing finance corporation. We have one item we offer on consent. This item is in relation to an assumption on the fort branch landing project. I'm available for questions. >> Cole: Any questions, colleagues? I'll entertain a motion. >> Spelman: I would like to thank betsy for sending us the background information. Move approval. >> Cole: Motion by councilmember spelman, seconded by councilmember morrison. Any discussion in all those in favor say aye. >> Aye. >> Cole: All those opposed say no. That passes on a vote of 7-0. Not no me, but -- thank you. That completes our agenda. Without objection with the board of directors meeting is adjourned. I now call back to order the meeting of the austin city council. That brings us to our 2:00 p.M. Zone cases. Jerry, greg, are you ready? There comes greg guernsey.

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>> Mayor, members of council, greg guernsey, director of planning development and review. I'll go through our 2:00 p.M. Items I can offer for possible consent approval or postponement. First item I would like to offer, item 32, property located at 2416 east sixth street. The applicant has requested postponement of this item to your april 17th agenda. Item 33 and 34 are related. I'll note in item 33, case c814-88-0001.10 for the property located at 800 north capital of texas highway, this would be third

reading for approval or denial or consideration on this case. But it's directly related to item number 34. Staff would suggest we actually act on 34 before you act on 33. Item 34 is case c814-88-0001. This is a restrictive covenant amendment for the property at 800 north capital of texas highway. This is to amend a restrictive covenant. We do have several speakers that have signed up for that item. That would be a discussion item for today. Item number 35, c14-2012-0067. Restrictive covenant. Applicant requested a postponement to your march 20th agenda. Item 36, c14-2013-0107 for 600

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kemp lane. We have a valid petition on this case. The applicant has requested postponement of this item. They would like to have a full council to consider this at a public hearing. If you would like to postpone this, that's up to you. I know it's been done before. Item 37, case c14-2013-0136 for the property located at 3215 exposition boulevard, the staff is requesting a postponement of this item to your april 10th agenda. The commission has yet to review this case. That's a postponement on 37 to APRIL 10th. >> Cole: Thank you, mr. Guernsey. Let me review the consent agenda with you. Item number 32 is postponed UNTIL APRIL THE 17th. Item number 35 is postponed TILL MARCH 20th. I'll entertain a motion on item 36 after we finish the consent agenda. Item number 37 is postponed UNTIL APRIL 10th. >> So moved. >> Cole: The consent agenda on zoning has been moved for approval. Is there a second? It has been moved for approval by councilmember spelman and seconded by councilmember riley. All those in favor say aye. >> Aye. >> Cole: Any opposed? The consent agenda passes on a vote of 6-0. Item number 36, mr. Guernsey, I believe you said that the applicant has requested a postponement because we do not have full council. I'll entertain a motion to that effect. Is that correct? We have a speaker. >> We would like to discuss -- a discussion postponement because we're not in agreement with the postponement. >> Cole: That is fine. Item 36 is a discussion item. A discussion postponement item. Councilmember martinez.

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>> Martinez: Typically on zoning cases when we have a postponement request, one person from each side gets to discuss the postponement, whether or not they are in favor or against. I would suggest that's what we do. I think mr. Thor is requesting a postponement because there is a valid petition. We have a long history on we don't take up zoning items when we don't have a full council because we have a valid petition. I would like to hear from each side and ms. Almanza appropriately so asked to do that. It's not a discussion item. It is a request for postponement and we typically take one person from each side to speak on the postponement. >> Cole: Councilmember martinez, I understand your comments and I'm taking them into consideration. I think the applicant has wanted this to be done on a council motion and not counted against them but that is not possible now that someone has contested the postponement. So I agree with you that we should hear from both sides regarding the p. Postponement. So the applicant, ron thor, would you like to speak to the applicant and only to the issue of the postponement? >> Mayor pro tem, councilmembers, as was stated it's been a long-standing tradition to not have a public hearing on a case with a valid petition when full council is not in place. We are in a discussion with a neighbor on this -- or neighbor to this property. It's our goal to try to come back to

council without a petition and this provides us an additional opportunity so that we can make that happen. With you all's blessing. If you have any questions, I'm available. >> Cole: Thank you. Mr. Almanza, are you speaking to the postponement? Okay. >> Council, I'm susana almanza, president of montopolis neighborhood plan contact team and montopolis

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neighborhood. We are against it because we recognize there has to be a super majority but you have six councilmembers. There's no law that says you have to have seven on this, unless I'm reading the law of - - not in the right but I've come before -- maybe not this particular council when six people have voted so there is precedent of that. And I guess a question would be are there two members on the city council who would be willing to override contact team's people of color in montopolis valid petition. Because if two people are not willing to override, it would be a mute issue. You would not need -- all you need is two votes to say no, we're not going to override a contact neighborhood group's valid petitioned and the issue would be mute. But should you decide to grant this postponement we ask that you make this case a time certain because our community cannot be here at 2:00 for a zoning case. This is a poor working class community in montopolis. So if you do, if you decide to grant them a postponement, we request that you put this on a time certain in the evening as a case to be heard. >> Cole: Okay. Thank you, miss almanza. Is this the first request for postponement from the applicant? >> No, there's a postponement request at the last meeting and it was also a discussion postponement. There's a difference of opinion about the dates and this is the date that the council chose. >> Cole: Mr. Rusthoven, let me ask you, we are not only talking about the issue of postponement and we have had the long-standing tradition of not hearing such valid petitions when one of the councilmembers are missing, and in this case the mayor is missing and that's because a valid petition requires six

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out of seven votes. Is that correct? >> It's true. It's true that the valid petition would take effect on third reading, however, there's nothing to stop you from having the public hearing and doing the case today. But what the applicant stated is they would like to have the mayor present for the public hearing while the case is heard so he can factor that into his decision making. They would prefer that we put it off until he is present for the public hearing. >> Cole: I'll entertain a motion. Any discussion? [One moment, please, for change in captioners] >> Cole: You also requested that we take up item 34 first with the speakers, I believe. >> That's correct. The public hearing is still open for item 34, which is a restrictive covenant amendment. Item 33 is the third reading of the zoning ordinance and there is a valid petition that stands on that property with 28.21 percent. Item number 34 is case c 814-88-0001. This is for the property located at 800 north

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capital of texas highway. The property is approximately 16.82 acres of land and is currently zoned planned unit development and the applicant is requesting to change the existing restrictive covenant on

the property to allow for a multi-family use. The intention is to develop the property with a multi-family use instead of the original office that was proposed. The site is currently undeveloped. To the north is part of the existing pud and zoned for use on single-family. To the south is low lo zoning and used for an office complex. To the west is sf-2 and also to the east is af 2. To the west is single-family and to the east is undeveloped. There's considerable opposition to the request as it comes forward today which is reflected as part of your petition on the related item 33. Again, 33 is case c 814-88-001, the canyon as rob roy rezoning. It is the request from pud to pud to make an adjustment in the land uses and development standards on that tract. We have incorporated the changes that you made at the last meeting regarding some environmental issues, some housing issues and use issues. And I believe that ordinance is on your dais in the form of a yellow copy. Should you like to consider that item today on third reading. With that I'll pause. I believe mr. Richard Suttle is here on behalf of the applicant and as I said before, you have certainly citizens that would like to speak in opposition to this request. >> Cole: Okay, mr. Guernsey, we'll start with our speakers, without objection.

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Is William King present? I know you've donated your time. I just need to make sure you're present. David Fritz, you're present. You've donated your time to Herb Harris. >> [Inaudible]. >> Cole: Would the applicant like to do a preparation before we start with the speakers? >> My name is Richard Suttle and I represent Jim Gallegos and G 5. They are not the owners of the property, they would like to purchase the property subject to it being zoned and the covenant that it might or might not effect or limit this property to office be changed. We don't have a presentation. You've heard the zoning case. We -- there are some that think that this covenant needs to be changed to be consistent with the zoning change asked for by Brandy Wine. As you know, there's been in some litigation over who has to sign this covenant. Brandy Wine is represented by counsel. Their counsel is stuck in Florida, but that's an issue aside from this because that's an issue of who has to sign this covenant on the owner's side, but we know the city has to sign on their side. We ask if you think this is an appropriate land use and whether the covenant can be changed consistent with the zoning change that has been voted on first and second reading. With that we'll be happy to answer any questions you might have. It's a simple covenant change that would have to be signed by the owner, Brandy Wine, and we hope that you will see fit to let the city sign the covenant. >> Cole: Thank you.

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Councilmember Riley. >> Riley: I recall that calls to question whether the homeowners have legal standing conferred by the restrictive covenant, whether the restrictive covenant confers on them the right to actually enforce the terms of the restrictive covenant. Is that roughly correct? >> Roughly. The language in the covenant says the city and the owners of the property directly affected. And there's a question one thing that's certain is it certainly requires the city, and I think what Brandy Wine and one of the homeowners is quarreling about is does it take both or one of them. That's not before you today and we're not taking a position: >> Riley: I understand that, but that is a matter that is of concern or at least of interest to the neighbors of the property. So do we have any sense of when we might get --

when there might be some resolution on that litigation? >> I don't know. I'm not handling the litigation. I'm not involved in the litigation. I don't know how that would work. I've been told the city filed an answer and the homeowners filed an answer. So it could be some time before there's resolution on this. >> Thanks. >> Now we'll go to our speakers. Mr. Herb harris, you have a total of nine minutes. >> I am president of the rob roy homeowners association and I brought some with me. He would like for them to stand if they would, please. This matter involves the application to rezone an area adjacent to the rob roy development for a 225 unit apartment complex by jim gallegos and his company. He has it under contract, but he does not own it as mr. Suttle told you. It used to be owned or is it owned by brandywine company, which is a successor to

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mayfield, which is a successor to davenport limited. And I'm trying to paint a picture for you so you'll get a feel for historically how this goes back. We're going to have some speakers that follow me that were there. And this all happened in 1988 but I want you to kind of know who the players are. Rob roy is a 300 home residential development, neighborhood, outside of loop 360. It was developed beginning in 1980. And exists today. We're governed by our own hoa board and except for some very limited e.T.J. Areas, which include the one we're here to talk about, we are outside the city of austin. Or any city. We have invested a lot in our homes. The good people of rob roy have seen fit to kind of police themselves. We've been self-sufficient. We haven't cost the city of austin anything in terms of services. The city doesn't provide sewer, doesn't provide police, doesn't provide anything. We have not been a cost item to you. In 1988 the homeowners association of rob roy, the city of austin and davenport ranch m.U.D., davenport limited, worked out a plan to allow future development of some of the land which surrounds rob roy. A land swap had occurred before this between st. Stephen's school and davenport. After three years of negotiations an agreement was signed by parties I just listed. We found some of the documents since our last setting here and we've provided those. Those include an august 15, 1988 letter of agreement draft between rob roy homeowners association and davenport.

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December 11988 between rob roy homeowners and davenport agreeing to the development and establishing a joint acc and outlining the uses of the land and finally december 15, 1988 a document entitled the first amendment to the contract laying it all out in 15 pages. And this was signed by davenport limited, davenport m.U.D., The city of austin, by john wear acting city manager at the time, and andrew martin, an assistant city attorney. These signatures were notarized. It applied to tract d, which is lot a 1, limited office use, which is spelled out as an 88,000 square foot office building. With that rob roy thought that the deal was final. We had signatures by the city, we had notarized signatures. We had what lawyers call eagles and seals on this. We thought a deal was a deal until just the other day. That's why these folks are here. The city of austin has had a similar instance as I understand it in a tree farm rezoning application and the same council felt like a deal was a deal. The city of austin in 1988 gave its word that this would be a deal. That you agreed to the terms of this. Nothing's changed. We think that these notarized signatures of the proper agents of the city of austin commit the city to these

documents. The city attorney signed it, the city manager signed it. We've brought with us today so that you can hear from the people involved two people that were in the actual negotiations, mary arnold, an important environmentalist in the history of this city, is here today, and she will

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be speaking to you. And also ruth cohoss, who represented the roy homeowners association. Mary arnold worked closely with rob roy to bring about this detailed agreement. Mary is a great person, known by environmentalists from a long time ago. And her presence in the negotiation and contract process was so that it would be properly developed and the plan would incorporate the roadway ordinance and the comprehensive watershed ordinance and other considerations. She did her best to make sure that the city was protected, the environment was protected and it's great that you're going to be able to listen to a few comments from her because I think mary and ruth want to tell you what the intent was. We can read paper all day long, but paper doesn't always convey what was on paper's minds, what was in their heart when they signed these documents. So you will hear from them after I sit down in a minute. We think in closing that a deal is a deal, and when we show you what the deal was and when we have other speakers tell you what was in their heart, what their expectation was when they signed these, I think you'll agree with us a deal is a deal. I'd like to close with a quick story about contracts. Our law comes from england, of course, the common-law, and in the 1500's scribes wrote every contract. They did it longhand with quill pens. This was in britain. And it became necessary at some point to make a change to the way they did it. They trimmed the bottom edge of each contract to wavy sort of pattern,

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they folded it up and put a ribbon on it and a seal on it, and only then was it a contract. Only then was it a deal. The reason they did that was because some people that had signed a contract wanted to add things and they would write them at the bottom of the contract, which was of course not what -- not what the other parties had agreed to. So in order to prevent this change single-handedly, they developed this process of folding and sealing contracts. And today I ask you to deny the application because this paper was sealed. It was folded. We don't think we ought to be allowing them to unroll it and change the terms. The people in rob roy want you to know they believe in this very, very deeply that a deal is a deal. Thank you very much for your time. >> Cole: Thank you, mr. Harris. Next we have ruth colhaws and ned [indiscernible]. There you go. You have six minutes. >> Mayor pro tem, councilmembers, my name is ruth colhaws, I'm a long time resident of rob roy. I address you here today because I was personally and directly involved in the negotiations which resulted in the restrictive covenants which you now ask to disregard. That instrument is entitled first amendment agreement to the contract concerning creation and operation of davenport ranch municipal utility district. The law firm for the rob roy homeowners association was jack horton of armbrust and brown. Mr. Suttles also of armbrust and brown now says the agreement drawn

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by his law firm isn't worth the paper on which it is written and that rob roy has no rights. Neither is true. Over the course of three years I met many times on this matter with mr. Morton, our lawyer, mary arnold, the city of austin and the representative of the previous owner of the land, westview development. In getting to this development dated december the 15th, 1988, and signed by three representatives of the city of austin, john wear, our acting city manager, an assistant city attorney, ralph reid, the city secretary. I remember how happy we were to receive the december 13th, 1988 letter from jack morton, our lawyer at arm trust, saying that agreement had been reached and has been, quote, submitted to the city of austin. Mary arnold helped us to comply with the comprehensive ward ordinance and the hill country roadway ordinance in the final agreement. The letter to me of 1988 explains the agreement that we had -- that armbrust and brown was to record the agreement in a legal matter with the city of austin. The agreement which you now have, which we worked out in 1988 with the help of mary arnold, the city, called for an office building, not a large apartment complex. A deal is a deal. The city agreed to it then and so did rob roy. Please reject this attempt of this developer to change what is a long settled matter. Thank you. >> Cole: Thank you. Mary arnold? Jan king, are you present? Okay. Patricia fritz, are you present? Mary, you have a total of nine minutes.

[09:33:26]

>> Good afternoon, members of the city council. Glad to be here. I'm -- first and foremost, this has to do with a very large planned unit development, a very complicated planned unit development, one that took four to five years to get to a completion of approval of the pud, the pud zoning, the limited purpose annexation, the sale and purchase of land by the city of austin. A land swap. And many, many things had to come together to create a 443-acre non-contiguous pud. And I'm sorry that the city staff has not presented to you more of the history of how this development came about. It has a lot of -- there were a lot of moving parts and a lot of compromises that were reached on a whole bunch of things. The city paid I think \$2.2 million for land that belonged to davenport development. In addition, davenport development donated some acres to the city and all of this was because of the endangered threatened status, the black capped veerio and the existence of a small wild basin preserve. The black capped virio had not yet been fully listed, so landowners in the area were concerned about how they could

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develop their property if the bird was listed. So people were saying well, if we get more land into wild basin, it can be a black capped virio preserve. City, please spend the money to do that. One of the speakers at the planning commission when this was being discussed was not happy about parkland money to that extent being spent out in this area, but that was part of the deal. Another part of the deal was a land swap with st. Stephen's school. St. Stephen's school had land across loop 360 from davenport ranch that davenport realized was more developable than some of the land that davenport had. And so they did this very complicated land swap which not only had to have the approval of st. Stephen's school, the diocese of texas headquartered in houston, where I think davenport limited owners were also headquartered. But anyway, so the environmental people in favor of the black capped virio and the



wild basin preserve wanted the deal to be done. The developers were willing, but they wanted exceptions and variances to the environmental ordinances, and it was a hammer and tongue, just pounding out how much variance was appropriate and how could the environmentally sensitive area really stand as much development as was being proposed. So what we came up with

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had to amend the pud ordinance in order to allow for a non-contiguous pud and then it had to get approvals from all of these different interest groups. The rob roy homeowners association -- the bunny run people were involved, as well as wild basin, the stip, the diocese of texas, st. Stephen's school, the davenport m.U.D. The reason this was an amendment to the m.U.D. Agreement was because at that time the land across loop 360 from davenport ranch was not in the m.U.D. And it didn't have wastewater service. And you could not develop all the things that they wanted to develop over there without centralized wastewater. And so that was also a real environmental issue. And the m.U.D. Had to agree to give out of district service to a portion of the proposed p.U.D. Of course, since that time davenport ranch has been annexed by the city of austin, but I assume that per state law the city takes on the obligations that the m.U.D. Took on. And the m.U.D. Was a part of this agreement on the land uses and everything else with regard to this p.U.D. So I think it's very important to look at all the compromises that were made in that area, not just on this 16.82 acres. But changes on the 16.82 acres should not be made without the agreement of the rob roy

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homeowners. Because that was the deal. And changing an 88,000 square foot office with a 35-foot height variance is -- the hill country roadway ordinance as it was pointed out in the planning commission hearings, was based on trying to preserve the vistas from the road. Well, looking up at an 88,000 square foot office building is not going to be as impactful to those on the road as 224 or 45 apartments. If you tried to build 245 apartments in 8,808,800 square feet, each apartment would have only 342 square feet. So from that you can tell that they are proposing a much larger structure, so why should they get the 35-foot height which was only related to an 88,000 square foot building? I think there are a lot of things that need to be thought about here but the main one today is that the rob roy homeowners in this whole p.U.D. Thing were an integral part with regard to what was going to happen to the land near their subdivision. And that was spelled out in the restrictive covenant because a deal had to be reached with the homeowners before the first amendment to the m.U.D. Could even go forward. So that letter of agreement was delivered and signed and I think that the city should try to honor that commitment because of the very complicated nature of

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this whole p.U.D. Compromise. Any questions? >> Cole: Mary, I wasn't sure how you were involved in the negotiations. Who were you representing? >> I was head of the planning commission at the time. >> Cole: Okay. Thank you, mary. >> I might point out that on february the 2nd, 1989, THE COUNCIL

Approved the conceptual land use plan for the p.U.D. On that same day they appointed councilmember ship man and several other neighborhood people, including me, to the brackenridge tract negotiating committee. >> Cole: Now, that is interesting history. That was just a little while ago. >> But it still is a current issue for a lot of people. >> Cole: It is. >> And the brackenridge tract is now not even 500 acres because they sold off land. [ Buzzer sounds ] but this is still 444 acres. Thank you. >> Cole: Thank you, mary. Amy davis? Amy, you have three minutes. >> Hello and good afternoon. My name is amy davis. My husband and I are the new homeowners of the home at 18 pascal lane, which we purchased about eight months ago. When we decided to purchase the home we did so relying on these restrictive covenants which indicate that the adjacent property is zoned for an office space and could not be rezoned without our agreement. That's it. Thank you. >> Cole: Thank you, amy. John joseph, you're next, and you have two people who donated time to you, patricia

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flannery, are you here? And phil wholehoff are you here? Thank you. You have nine minutes. >> Thank you. Mayor pro tem, members of the council, my name is john joseph and I represent the rob roy homeowners association. First of all, this isn't a simple restrictive covenant amendment. This is an incredibly complex restriction that resulted from a number of negotiations that occurred over a very long period of time as the previous speakers have indicated. This neighborhood association took this issue very, very seriously and hired armbrust and brown when they did because armbrust and brown was and still is recognized as one of the outstanding real estate and one of the most politically active and connected law firms in the city. And I say that not because I'm complicating richard and his law firm. I saw that because this is how serious an issue this was to this homeowners association. They went and found the best law firm that they could to negotiate this agreement for them that resulted in an agreement that they felt and they were told by armbrust and brown was sufficient to protect them in the eventuality that someone should try to come and change this restrictive covenant. And not only did they think it was significant to hire armbrust and brown and participate in these negotiations, but the city of austin also

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considered their participation important to these negotiations. As you will see in the first amendment to the restrictive covenant on page 1, and on page 2 of the restrictive covenant amendment, there's a are recitation of the pa parties that are integral to this agreement and one of those is the rob roy homeowners association. In addition to that on the last page of the restrictive covenant amendment -- and I can't read it from there, but I will try to get to it from here. It says in paragraph 6, davenport limited and rob roy homeowners association shall have an agreement in the tracts. And previous to that it says the agreement and all rights and duties here under shall be effective when all the following conditions are satisfied. What that says is that the city of austin found it was so important that the rob roy homeowners association have an agreement that they made it a condition of the approval of this first amendment to the consent agreement. How does that relate to this restrictive covenant? I would submit to you I'm saying to you that it was important to you that that agreement be entered into, which

is in front of you. I think we've shown you. I've got a copy of it up here.

[09:47:36]

This agreement that was entered into on december THE 1st, 1988, IT WAS Important enough to you that that be made a part of the amendment to the consent agreement, for it to become valid. So I'm not suggesting to you that the -- that you don't have the authority to make a decision. What I'm saying to you is that you shouldn't change this restrictive covenant. There was a great deal of negotiation over 400 acres involving wastewater service to thousands of square feet of commercial development at westlake and 360. It involved the annexation of land and the dedication of land and the purchase of land and the establishment of land use and consider it out of context. It was very important to them and important enough to you at the time to report that there be this agreement. So I will submit to you that if you look at the totality of the agreements, the amendment of the consent agreement, the restrictive covenants that were entered into, the agreement that was entered into by the rob roy homeowners association, that it is hard to understand how we can say that they are not directly affected by a change in the land use on this property. So I'm asking you please don't change this restrictive covenant, please honor -- please honor the agreement that was made with these homeowners and the owners of the property at the time and please honor your commitment to them at the time that their agreement be a condition of the approval of this consent agreement. And so with that I'll conclude. If there are any questions I'll be happy to address them at this time. But otherwise please

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don't -- please don't change this restrictive covenant. >> Cole: Mr. Joseph, let me ask you one question. I appreciate what you said about you recognize that you have the authority to make this decision and you're not asking us to delegate that authority, but you are asking us to deny restrictive covenant because it would take the 116-acre tract out of context. Tell us what you mean by we would be taking this whole issue out of context. >> The 16 acres were first evaluated for this particular use as a part of the entire agreement. It was part of a 400 some-odd acre land plan that evolved over a four-year period, and it seemed on that you just simply pull it out now and 16 acres would change it from office to multi-family. It is a basis -- was a basis for and part of the entire agreement. And what I meant by -- I'm not asking you to delegate your authority, I'm saying that you have the right to make a decision. I'm asking you not to change this restrictive covenant because of the totality of the facts that have been presented to you today would indicate that these people are an integral part of this restrictive covenant. And their interests were so important that it was made a part of the amendment of the consent agreement. And their agreement with this property owner was made a condition of the amendment of this consent agreement by you. I'm saying please don't change that. Unless these people are asked to renegotiate this restrictive covenant, please don't. That's all I'm saying. >> Spelman: Is this the only tract that we have a similar agreement to this? >> I don't have any idea. When there's a restrictive covenant that applies that there's a consent agreement that applies to all of the 400 acres.

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>> Spelman: Sure. >> There was a p.U.D. That applies to -- there's a p.U.D. That applies to the 400 acres, if you're talking about that being a restriction, the restriction -- this particular restriction applies to the rob roy portion of the 16 acres. >> Spelman: Right. What I'm really getting at is our historic interpretation of that whereas. On the first page it says -- we can modify and terminate by joint action of both, a majority of the members of the city council. We have to agree. And b, the owners who is or are the owners at the time of such modification amendment or termination of the portions of the property which is or are directly affected. What you're saying is these people out here are directly affected. >> There's actually more property than that that was subject to the restrictive covenant. It's not just these people. It is rob roy homeowners association and the rest of the properties that are on both sides of pascal. >> Spelman: I understand that. The question I'm getting at is not everybody who -- is everybody who owns any land that was in any davenport ranch restrictive covenant, any of the land covered by this original agreement, subdivided, it has a lot more owners than it used to have, are all the owners directly affected? >> No, just the ones that are part of that restrictive covenant. It is the properties on both sides of pascal lane. If we can go back to the presentation. >> The properties we're talking about are the properties on either side of pascal lane on

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to your left. >> Spelman: Is that tract c 3? >> Keep going. >> Spelman: So c 3, d, all that. That was 16.83 acres. >> That's correct. And in actuality this restrictive covenant appears on all of the properties when you run the title run on all the properties south of pascal lane. >> Spelman: And your argument is those are the people who are directly affected because those are the original cigna stories or that was the land covered by the original restrictive covenant. Is that right? >> I'm saying they're directly affected because it shows up on their title and because the city of austin made their agreement an integral part of the amendment of the consent agreement. >> Spelman: Have we ever to your knowledge had other restrictive covenants in other parts of town with clauses like this? >> I'm not aware of any. >> Spelman: Okay. So this is -- if it's the first time we've ever looked at it then it's just the plain language of it is controlling on us and you don't know of any court cases, any interpretations of words of this kind that we can rely on to help us identify what we really mean by directly affected. Is that right? >> No. It was clear to me when I read it what it meant. >> Spelman: Directly affected is anybody who owns a portion of that 16.82 acres. >> Yes, sir. >> Spelman: That's what I need to know. Thank you, sir. >> Cole: Councilmember morrison. >> Morrison: These are some questions that I had an opportunity to talk with our legal department about because this is a complicated legal question. And I wonder if our city attorney could comment on that whole issue? Have we done this before? How has it played out? >> Ms. Thomas? >> Yes. We were able to find some other restrictive

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covenants that had that same language in it. One actually was in davenport ranch, I believe. That language has -- for the city has always meant that the land that was subject to the modification is the land that was -- that was directly affected. We have since modified that language to be more clear and

so that this issue wouldn't come up, but the way we have treated that provision in the past is that the land that was the subject of the modification is the land that was directly affected and we did have a couple of other examples that did -- in which the person who signed was the person -- the owner of the land affected by the modification. And none other. >> Morrison: I don't know if you can speak to this, but it's my understanding that there's been a situation where we had a restrictive covenant with this kind of language when arguments were made one way or the other and that the city has been consistent? >> It showed there was a similar situation, neighbors were similarly concerned and argued that they were a part of the directly affected and in that particular case we handled it in the same manner that we've always advised. >> Are you saying they're not directly affected? >> Yes. >> And what I'm saying to you is -- >> Cole: Someone needs to ask you a question. I'll entertain a question to you. Would you like to -- can

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you explain your understanding of directly affected? >> Yes, ma'am. I'm not -- we're getting wrapped around the axle on directly affected. And what I've asked you is not to change the restrictive covenant. And I'm basing that on the fact that you have before you, you have -- you have lawyers represent you. There's litigation going on about whether or not these people are directly affected. I'm not -- what I'm saying to you is it's clear to me it was pointed that they were important to this transaction. Important enough that it was made a condition of the consent agreement. And the agreement was entered into. I'm saying to you don't, please don't. Don't change it. That's what I'm asking you. I'm not telling you that you don't have the right to act. I'm asking you not to. >> Cole: Thank you, mr. Joseph. >> Morrison: I want to sort of summarize. I understand that the issue of who needs to sign the restrictive covenant is a big legal issue and I guess any of us have an opportunity to act however we feel about it or leave to the courts to decide. I just wanted to make sure that it was clear that it was on the table that we do have other examples of this and the city has been consistent in its application. >> Cole: Thank you. Our next speaker is harvey ring. >> I feel as though I would be losing my rights and you would abrogate my contract if you changed the ordinance. And so I think that you

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need to think about all the people you're going to affect that have this in their contract that bought a home, subject to this agreement. And that's how -- I think many, many people in rob roy have done the same. I would appreciate it if you would consider our rights to. Thank you. >> Cole: That concludes the speakers on this item. Number 34. Does the applicant have any response? >> Mayor pro tem, members of the council, I don't know if correct is the right word, but I need to refute something that ms. Colhaws said. That the letter wasn't worth the paper it was written on. I'm not taking a position on that letter. What I'm saying is that the restrictive covenant -- and that's different from the consent agreement that john has mentioned, the covenant says in it nothing here in shall be construed to limit the right of the declarant or successors to amend the concept plan or any other provisions of this restriction subject to the terms set forth here in and other city requirements. It also says nothing in this restriction shall be construed to prohibit the exercise by the city council of the city of its police powers and its authority

under the city charter and the laws of the state of texas or to limit or prevent the right of the applicant or the declarant who is the ownership that owns property and from seeking variances. Throughout the covenant that we're talking to you about today, it references there may be changes coming and in fact at the end we've got the change provision that says it has to be signed by various folks. And you have similar

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language, as you have seen, about how you've done that. In fact, mr. Joseph has changed covenants with similar language to this. And so I tell you all that in the conditions change, my client is undercontract to buy a piece of property that if you decide that the appropriate land use on 360 is a multi-family tract encumbered by the restrictions and the affordable housing and the new watershed ordinance that you could make that decision, and if you think that's appropriate you're exercising your police power and we would ask that you do that and then my client with move forward with his business relationship and the lawyers can all get busy on what they have to say about what agreements apply and what don't. Thank you. >> Cole: Thank you, mr. Suttle. >> Riley: Miles per hour? I gather that mr. Joseph would like to respond briefly. >> I would like to know the example of restrictive covenant that I have changed that's like this. I don't recall that ever being the case. And it's not right to say that unless you know that's happened. And give me the example. >> Cole: Mr. Joseph, we are not presently in a court of law where we get to have you and mr. Suttle debate each other. We are here simply to answer the questions of council as we are deliberating a decision. Is there a question of the applicant or mr. Joseph at this time. Any further questions? Councilmember riley. >> Riley: I would like to ask mr. Suttle a follow-up question. First I would like to see if you have a brief response to mr. Joseph's comment and then I have a follow-up after that. >> Which one of john's comments? [Laughter] >> Riley: As I understand it, he was asking if you knew of other examples. >> Well, there's -- I don't think this is the appropriate time to do

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this, but when we were digging through trying to find out if we were -- on here, there was a covenant that was done and I believe scofield farms -- somewhere in here you're in this stack of stuff. Do you really want to do this? >> No, I don't. I don't want to get buried in the legal aspects of it. Let me see if I can frame it in terms of the fairness question that I think mr. Joseph was raising. And his point I think is pretty straightforward. That apart from whether the neighbors have the legal right to block this zoning the basis is this was a complicated deal that the neighbors participated in working out many years ago. And from their perspective they had a clear understanding that there would not be residential uses allowed on that tract. And they signed off on that agreement as did the city and now we're about to tow owe we're considering whether if -- whether that should be changed. And their basic point is -- the reason they participated in that discussion, entered the the agreement and put it all in writing was that they expected that there would not be residential uses there. And that since then they have relied on that language. And that there's a basic fairness question about the city changing the use at this point given that the neighbors participated in all that along with the city and working -- working out this deal

many years ago, that now the city is up and changing -- changing the agreement on its own. And that's just setting aside all the legalities of it, I think that raises a basic fairness question and I would like to hear if you have a response to that basic question about the fairness of what we're

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considering. >> The lucky thing is I don't have to sit in chair and determine what is fair or not. When you talk about -- what John was very good at doing was bringing in a whole lot of different pieces of paper and talking about what agreements were what and we had m.U.D. Consent agreements. We had letter agreements, all these different things. And everybody is saying what they were relying on and what they weren't relying on. And my client finds a piece of property and says if the city determines that this is an appropriate use and conditions have changed on loop 360, and it's going to be okay because I think one of the speakers said looking up at an apartment is different from an office. It sits down low. The rooftop of this facility will be no taller than the finished floor of their ground floor. But what's fair is our city has changed. Is it fair that we're to the point in the city of Austin that when we're doing a zoning change that we need to consider affordability. My client has considered that is fair and says conditions have changed. And I guess conditions have changed. And I think you have to determine whether it's fair or are not. I'm not certain that anybody that -- I certainly wouldn't. If I bought a house next to a vacant piece of property, I don't know that it would be fair to assume that it's always going to be either vacant or something that somebody decided in 1988. 1988 was a different time. So good news for me is I don't have to determine if it's fair. That's unfortunately the hard decision you guys have to make. I would maintain that it's not necessarily fair we put multi-family and affordable housing in a lot of different places in our city and not so much over here. >> Cole: Thank you, Mr. Shuttle. Any further questions of the applicant? Comments, discussions,

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motions? Councilmember Spelman. >> Spelman: I'm not running for anything so I can move anything I want to. I move approval on third reading. >> Cole: I'll second that. Councilmember Morrison, you have a comment. >> Morrison: I want to speak to why I'm going to support this. I think that the whole issue of whether the neighbors are going to find I'm going to let the courts sort that out and I fully support that going through that process so that we can do what we need to do. And if it turns out that the neighbors need to sign it, then this is probably all a moot point for changing this. So in terms of looking at our discretion, certainly when I'm looking at a case that has a valid petition, I put a lot higher bar on asking what are the benefits this would bring to the community. And in this case the affordability has been mentioned. I think that's very important to -- it's something that we talk about, affordable housing, all the time, it seems like. And one of the things that we also talk about is how important it is for the health of our community overall to be able to have affordable housing in areas of high opportunity. And don't have an opportunity to do that very often. But also I want to stress that this ordinance requires the property owner to develop under the new watershed protection ordinance, which is 30 -- I think 30 years down the line from the environmental protection it's currently under, so there is a significant, significant amount of improvement in terms of protecting the environment which is very important to

me. And I think that, you know, any neighborhood group that I'm working with when they're working through an issue and making the

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agreements, frankly, you know, restrictive covenants are great, but it's always been the case that they can be changed with a vote of four councilmembers. It's always been the case. So private restrictive covenants are a different deal. So with that I wanted to -- I guess to just sum up that I do see extraordinary benefits in what is going to be brought to the table so I will support the motion. >> Mayor pro tem? Over here. >> What you are debating right now is a restrictive covenant amendment so we do not need three readings on that. So this would just be a motion on the restrictive covenant, which is item 34, and we'll come back to 33 on the zoning case, which is third reading. >> I thought we were taking in the 33, 34 order. I didn't realize we were taking the restrictive covenant first. >> We're taking 34 first. You made a motion on 34. You're sticking with that? I'll stick with my second. I just wanted to make a few comments. I certainly appreciate the neighbor's concerns and their property right interest and that you've been a part of this process a long time. I echo councilmember morrison's concerns about affordable housing being geographically disbursed throughout our community. And I think that this item does that. But the legal issues have not been fully hashed out, but I believe we have the full authority at this time to act on the restrictive covenant so I will be supporting the motion as I made the second. Any further comments? >> Spelman: Just one, mayor pro tem? >> Spelman: I think this issue is probably true for others is water pressure, but it's premature for us to consider water pressure. That will be considered at site plan and if the applications produce a site plan, which will actually have an effect on your water pressure, it's going to get poured out. We will have to find some way to fix it. I hear your water pressure will remain constant or improve as a result of whatever happens here.

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And if it doesn't, we screwed up. I don't think we'll screw up in that particular way. >> Riley: I will be supporting the motion too. I want the neighbors to know we have heard you and I understand your concerns. As we've discussed, the council is in a difficult position because we do have a policy decision to make here. It may well be that there continues to be a legal issue that could well prevent the rezoning of this property, but that will be sorted out by the courts. And if this is the case that the affected property owners include all of those along both sides of pascal lane, then that will be a matter -- then that will obviously change the ultimate disposition of that site and that -- and I recognize that that may well be an outcome. But as long as we are -- we have a policy decision to make, as is typically the case with a public restriction covenant, then we have to carefully consider all the interests at issue, which include the public interests that are embedded within our comprehensive plan, that include affordable housing and environmental protection. So in this case considering all of those interests on the table I think that they weigh in favor of the rezoning. >> Can we have a motion to close the public hearing -- councilmember tovo. >> Tovo: Sorry to jump in. I did want to make a few comments. I wanted to say this is an extremely hard case and I think before I sat on the council I would watch the deliberations and think -- not be fully aware of how many conversations really happen outside of this room. And I want



the neighbors to be assured that probably all of us have put a lot of thought and time into the decision we're making here today. Councilmember spelman brought up the question of water pressure and that's something that was raised in my discussion with the neighbors and certainly has been raised in some of the emails we've received and I know I've

[10:13:47]

spent time with our water utility staff with representatives from the fire department and my staff has done the same. We've spent time with our legal counsel here looking at the restrictive covenant and some of the examples we've talked about earlier here today and really weighing all of the considerations that you've raised. I want to echo councilmember riley that I've heard your concerns, have taken them seriously and have research them with staff. Having said that, fundamentally for me the question was not about whether we had the authority to change the restrictive covenant as has been said, I believe that will be sorted out in the courts, but it's based on the information I received, I felt comfortable that we do. But for me fundamentally the question was whether this is an appropriate land use. And we do have an imperative here in the city to create all kinds of housing in all parts of town for all kinds of people. Having housing in this area is an appropriate land use. And for me that is -- that was the determining factor that having a residential use on this property is an appropriate land use and the increased environmental protections were an added benefit. So I will be supporting this motion as well.

>> Cole: Councilmember martinez. >> Martinez: I won't repeat everything that everyone said but I agree with many of the comments. I will say something I know a little about and it was talked about in this case as it relates to fire danger and fire risk. That is a tremendous issue in our county and especially in the western part of the county. I have direct experience with that and I can tell you that from a risk standpoint and from an environmental standpoint, 200 units in one or two structures is far better than 200 single-family units spread out over the western part of our

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county. So for those reasons, I think not only is it an appropriate land use, but it's a far superior project. If we were to have to try to find 200 parcels of land to build single-family homes for folks that need a place to live, I just think this is much more appropriate, a much safer, much less of a risk and environmentally superior to that alternative. >> Cole: Thank you. There has been a motion and a second to close the public hearing and approve the restrictive covenant. All those in favor say aye? Those opposed say no? It passes on a vote of it passes on a vote of six to zero. Now we'll take up item 33, which is the canyons, rob roy rezoning case. Did you have any further comments about this, mr. Rusthoven? Okay. I'll entertain a motion. >> Spelman: The public hearing has been closed, has it not? >> Cole: Yes. >> Spelman: I move approval on third reading. >> Cole: I'll second. Councilmember spelman moves approval on third reading of item number 33 and I'll second that. Any further discussion or comment? All in favor say aye? Those opposed say no. That passes on a vote of six to zero. Mr. Guernsey, this takes us to our 4:00 public hearings and possible actions. >> Mayor pro tem and council, I'd like to offer number 39, which is to conduct a public hearing and arrest consider an ordinance amending city code 25-one and 25-5 relating to vested development rights under chapter 245 and section 43.002 of the

texas local government code. Staff is requesting a postponement to your april 10th agenda. The planning commission did postpone this item to their march 25th agenda at the request of both reca and save our springs alliance. Staff did not open to the postponement and right now you have copies of what the commission has, so we would encourage you to

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take a look at that. And in your backup I'm sure you will be possibly having questions of myself or my staff over the coming weeks. But we -- staff is recommending postponement to april 10th rather than march 27th because we believe the commission action may be one where it might not be simply taking the staff's recommendation. They may add some things to it or change some things and we want to be prepared to fully give you the full picture of what they may or may not be recommending if they do take action at their meeting and have that timely prepared for your consideration. And that's why we're ASKING FOR APRIL 10th. >> Cole: Okay. Staff has proposed that we postpone item 39 to APRIL 10th. That's done without objection. I'll recognize councilmember morrison for a possible proposal on item 41. >> Morrison: I suspect a lot of my colleagues as well as myself have had an opportunity to speak with folks about the holly shores, etcetera, master plan that's gone through. And there are still some -- certainly some unsettled issues. And I can see that trying to understand what's really going on and what might well be a good way to head in the right direction, what I wanted to do is -- I have some concerns also, so what I would like to do is make a motion that we postpone until april 17th I mentioned earlier, with specific direction to staff to, number one, consider -- take a look at treating this park area as a district park as opposed to a metro park because I think that that is a big issue is this park supposed to serve the whole city or is it more going to be integrated into the neighborhood. I'd also like to ask that they speak with the

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community and come back with options with the bridge removed. Thirdly, that they look at and speak with the community about options on the lagoon and whether or not it's active recreation or passive recreation. That they also work on coming up with limits on the number of events and that those numbers might actually be different limits for different size events. And then lastly to find a way to include policy direction in the master plan that the implementation and enhancements would be compatible with the existing neighborhood and non-invasive. That's my main concern. So I would like to give that direction to staff to work with the community to be able to come back with a recommendation, and I think that the month or five weeks would give us time to understand if they're going to be -- if there are going to be other consequences to treating this parkland as district as opposed to metro parkland. And I know that we would have an opportunity for a lot of full discussion. >> Martinez: I'll second that. >> Cole: Councilmember morrison has made a motion to postpone item number 41 until april 17th. Councilmember martinez has seconded that motion. Councilmember martinez? >> Martinez: Yeah. Councilmember morrison, I was wondering if you could accept a friendly amendment. Based on the information I'm receiving I don't think we'll get very far in five weeks. I would like to give more time because I believe there's significant differences with the community's concerns

and desires and what is in the plan. And it's just a plan and we don't have any funds for this plan, so I would rather give them more time and would

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propose may 22nd to give them a couple of months to come back. And I don't know if you will accept that as friendly, but there's some directions that I want to also give staff. >> Cole: Councilmember morrison, do you consider may 22nd friendly? >> Morrison: I think that the direction that I gave could actually be done within the april 17th time frame. It would be my thought. So if there's additional on top of that, then I would certainly want to consider it. >> Martinez: Yes. >> Cole: Councilmember martinez wants to give additional information about why he would like to ask for the may 22nd date. Councilmember martinez. >> Martinez: So my understanding is that the engagement team consultant that we hired was a part of this for some time and then towards the end just kind of stepped away from the project because they weren't getting the information in the final master plan draft before it was presented to the public. And going in to the draft of the master plan there were still substantial differences as it relates to the food forest concept, the pedestrian bicycle bridge, making changes to longhorn dam which actually aren't a part of the park. They're a part of the roadway infrastructure. I'm not sure why it's in this master plan. Then the conversation about reconfiguring roadway through the middle of the park and in between the ball fields had substantial concerns from the community and so I want to make sure that we go back and visit all of those issues. And then quite frankly that we try to build some consensus. This is in their neighborhood. It's their park. As you said it does not fit the definition of a metro park as others do in our community. I'm very supportive of the district park idea with the caveat that there are some

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long-standing conventional events that happen. And if district park designation creates an obstacle for those long-standing cultural events to take place I would want want us to revisit that and make sure we maintain those as well. >> Cole: Councilmember morrison, councilmember martinez has given additional rationale for why he would like the may 22nd date. Is that date friendly to you? >> I would like to get one clarification and make one point. Absolutely I understand that there are large events there that are traditional and historic and part of the culture. And I want to make sure as things grow and expand that it doesn't take over completely. As you mentioned we've been at this a long time, community has been at this a long time. My concern to find consensus at this point is we'll never get to it. And I wonder if you're interested in actually giving more focused direction. I'm just concerned about whether even by may 22nd consensus could be reached whereas with the issues that I brought up, it is direction for a -- for the staff to move in a particular way. And so -- >> Martinez: I'm fine with -- let's drop the conversation and leave it for april 17th. If we postpone it again we postpone it again f we adopt it, if we kill it, we'll decide on april 17th. >> Morrison: That's great. I think maybe there's an opportunity for some of us to actually engage in the conversations and help move it along because that's the main thing. I wonder, mayor pro tem, if I could just ask real briefly is there a burning statement that you would like to make. >> I'm president of east town lake citizens. I want to just make -- we agree with mike martinez.

We do need a big time frame. If we can't get a year moratorium then at least until may because there is a lot of detailed information that we do

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need to sit and go over with parks and the community neighborhood. We're also asking for a -- the time to be changed because 4:00 is a time that middle class and low income families are working. We don't get off of work until 5:00. Public input has to be for everyone to join and be able to voice our concerns. So we're asking if we can get a time certain until 7:00. >> Morrison: No problem on that. Well, I just want to make sure that he with really move things along. Councilmember martinez, I will accept your motion, that's friendly TO MAKE IT MAY 22nd. I hope that maybe folks that are involved in it on the dais can really delve in and try and provide some direction of what will be supporting when we come back so that we can get some real progress here. >> Cole: Is your motion for may 22nd at 7:00 p.M. Time certain. >> Morrison: Yes. >> Cole: We have a motion to postpone item 41 to may 22nd at 7:00 p.M. And that has been -- the the motion was made by councilmember morrison and seconded by councilmember martinez. Any further comments or discussion? Councilmember riley. >> Riley: With regard to the motion, I heard something in the second paragraph about a bridge, but I'd like to get some clarification on that. >> I want to make sure that the bridge itself is not a done deal. That it certainly is one opportunity for connectedness, but there are other opportunities for connectedness also. >> Riley: So we're not directing staff to back off the bridge. We're asking to present options that may or may not include the bridge. >> Morrison: That's right. When I spoke with staff about what was on the papers I was looking at, it was in their mind the proposal for the bridge was just an option. And so it sort of to

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make sure we -- >> Riley: If I may, mayor pro tem. I have gotten a few questions about that bridge. I have one email saying that there are bridges -- that both longhorn dam and i-35 are actually scheduled for upgrades, which would serve that -- which would accommodate bikes and pedestrians. I have checked with staff and I don't believe that's the case, but I would like to get some clarification, along with that -- actually, independent of this. At some point I would like to get an update from staff on where we are with regard to addressing the issue that we all know exists, especially with bicycle-pedestrian access along longhorn dam. Because that has come up in several context and there is some confusion about where we are on that. I think it would be helpful for all concerned to get clarification about where that issue stands. And it seems like that information could come before the whole plan comes back to us. At some point I would like to get something from staff. I see staff nodding their heads. It would be great to get an update on that. My second question relates to the other end on holly shores. I know there's been a lot of interest in the food forest at festival beach. I've heard some concerns that delays with the plan may create issues for moving forward with the food forest at festival beach. I just wanted to see whether there's any expectation with this postponement that that item would be postponed or whether that owe thee can move forward even though the plan is being postponed. Is there anyone -- [one moment, please, for change in captioners]

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>> we were recommending to set up a committee by the parks board to look at priorities in the plan, that being one of the goals that we would like to -- to present to them as to how, you know -- how to prioritize the food forest among other recommendations in the plan. So at this point we were hoping to at that implementation committee to give us that input. >> Riley: And now do you see any problems with continuing our efforts at outreach on that project even while we are waiting on -- for the progress - for the plan as a whole? Do they need to be treated as one entire package or is it -- is it possible to move forward with outreach and discussions and progress on the food forest before we get to the whole discussion about the master plan? >> I think we could put that at the top of our agenda as we start this dialogue with the community. I know it's one that has had differences of opinion. So that's one that we can -- we can put ahead and start talking about that right away. >> Riley: I think that would be helpful, because my impression is that we are -- if we can address issues like community outreach we may be closer to the point of being ready to move forward on that particular project than we are with respect to other aspects of the plan. >> Cole: Okay. We have a motion to postpone item no.41 to may the 22nd, and we have a second. All those in favor say aye. >> Aye. >> Cole: Aye. Those opposed say no, that passes on a vote of 6-0. We have one public hearing left, item no.40. It is a floodplain variance.

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>> Thank you, mayor pro tem, council members. Kevin shunt, city's floodplain administrator from the watershed protection department. Item 40 before you this afternoon is a floodplain request at 5505 jim hogg avenue, which is on the hancock branch of the shoal week watershed. Here's an aerial view of the existing conditions. You can see the property outlined in red. This general area that we're in is 2222 up on the north, lamar on the east, north loop on the south, and burnet on the west, just to give you a little proximity. The property is just north of houston street. You can see there, right there on jim hogg avenue. The property is completely within the 1 25-year floodplain, the darker color here is the 25-year floodplain and the lighter color on the outside is the 100-year floodplain. The existing house was built in 1945. It's a 792-square-foot existing single-family house. The finished floor elevation of this house is one foot above the 100-year floodplain. In addition to demolishing the existing single-family house they were proposing to remove the shed, which you can see there in the backyard. Property. There is a picture of the house as it exists today. The applicant is proposing to demolish the single-family house in its entirety and then build a new 2,966-square-foot single-family house, two stories. The finished floor elevation of the proposed house will be 2 feet above the 100-year floodplain as opposed to 1 foot for the existing house. In addition to the single-family house they are proposing to build an 820-square-foot secondary dwelling on the rear of the property. You can see there in the

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polygon on the rear. It will be a secondary dwelling that sits on top of a proposed carport. So the secondary dwelling is essentially all second level, obviously with access, stairs down to the carpool level to walk out. So therefore, the finished floor elevation of the secondary dwelling is about 6 feet above

the 100-year floodplain. So I took this feet from their design plans but that's my blue line across it. The blue line represents the level of the 100-year floodplain. You can see the single-family house on the right side of the slide, it will be a pier and beam foundation, open on the bottoms to let water flow through so there will not be any volume displaced with this proposed house. And then you can see in the rear where the carport is with a secondary dwelling there on top. So in the backup documents I provided a table this kind of just summarizes some of the depth that we're talking about with this property. So the - for the 100-year flood, the depth of the 100-year flood is the front door of this proposed single-family house is a little less than a foot, about .8 feet. And then to walk to the street, where the floodplain depth is approximately 1 foot. And then another hundred -- probably another -- 100 feet to walk out of the floodplain north on jim hogg. However at the rear dwelling, when the only way to get from the rear dwelling, down the stairs and walk up the driveway or through the other house, the depth of the hundred year flood at the rear dwelling is 3 feet deep and obviously gets less as you go towards jim hogg. So it's a walk from the second -- to walk from the secondary dwelling to the back porch of the single-family house is about 70 feet and then to walk from the single-family house out of the floodplain is about 100 feet. So with the request to put a proposed building within the

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125-year floodplain obviously requires a floodplain variance. In this case they're not meeting the safe access requirement. We talked a lot about safe access and I have a slide to discuss that a little bit more. So that's one of the variance requests, is so that they can build the single-family house and the secondary dwelling unit without having safe access out of the floodplain. In addition, by putting additional conditioned area on the lot, we consider that to be increasing the nonconformity that's on the lot, having more conditioned space. In addition the drainage easement requirement to move the -- remove both the building, the single-family house and the carport and secondary dwelling from the drainage easement requirement. Now, I've had other slides to talk about safe access that have pictures. This one, I hope the video works because this is my first foray into videos. >> If you click it it should be embedded in there. >> Okay. All right. >> Cole: So you're not -- >> not going to see the video at this time. >> Cole: Okay. >> Numbers, what it's indicating, obviously, is -- has been said -- the video shows kind of what we mean -- why safe access is important, and so when you're -- you could build a house, and obviously build a house above the 100-year floodplain level, and that obviously minimizes risk to the house and minimizes risk for the people in it. But at some point in time, and frequently people will need to exit the house. Well, at the time of the hundred year flood we're trying to -- what the safe access rule is traig to do is to -- trying to do is allow people walk from the house above the floodplain to an area on the right-of-way, all on a elevation that's above the 100-year flood, therefore giving you dry weather access to get out of the house or for first responders to get to the house. That's the point of the safe access requirement. For this proposed development, as I went through, the single-family house itself is 2 feet above the floodplain and the depth of the 100-year flood once

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you w out is a little less than a foot. When I get to the street it's about a foot and 50 feet or so to get out

of the floodplain. The secondary dwelling unit, the depth is 3 feet at that location and you have to walk obviously up to the street to get out of the floodplain itself. So summary of the findings, the applicant's engineer did submit engineering information and the staff agrees that the development itself won't cause adverse flooding on any other property. It won't increase water surface elevations or flood depth and they're compensating for volume they would be feeling with the house itself. There's no adverse flooding. We talked about safe access and the fact neither dwelling has safe ac. There is additional occupancy in the floodplain, which is the nonconformity section I talked about. The finished floor elevation, to both structures, both buildings, is a minimum of -- the requirement is 1 foot above the floodplain, the main house is 2 feet and the second dwelling is 6 feet. I put the no hardship condition on there really -- really talking about the fact that there is an existing single-family house in use on this property today, so when we look at hardship conditions we see that the property is in use and can be in use, even without the variance, which is why I placed that on there. So staff recommendation for this application for this request is denial based upon the fact of some of the depth of water and the velocity of water and the distance you would have to walk to get out of the floodplain itself. I do have, however, a draft ordinance in your packet, just the three conditions that are on that draft ordinance is the requirement to have a drainage easement, an elevation certificate and structural certification prior to getting a certificate of occupancy, and so those -- those are in your packet. I am happy to answer any questions about that. That's all I have. I'm happy to answer any questions and I do think

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that there are some speakers signed up as well. >> Cole: There's several speakers signed up. We'll go to the speakers then. Thank you. John rogers? You're up to speak, and several people have donated time to you. Will battle, are you here? Thank you, will. Mary hobbs? Beverly strop? Linda johnston. Okay. John, you have a total of 15 minutes. >> Council, I've got some -- a handout for you. My name is john rogers. I grew up in austin, texas. I've been here since about -- I was about 6 years old, started elementary, graduated from regan high school. My wife and i, we own 5505 jim hobbs, the property in question. -- Jim hogg. We've showed photos. There's some in the front of your packet as well. It sits on about a third of an acre. It was built in 1941. It's currently appraised by the county -- the land, at 149,600, and the structure at 43,712. I got a second page in my packet, a yellow tab. It's just the printout from travis cab.Com. My husband -- her husband, they bought the house in 1996 with plans to expand or rebuild, our daughter audrey and her fiance have lived there the last three years. The current home is in disrepair. It was built 70 years ago as a starter home. You can imagine. It has old wiring, plumbing and our dawft audrey will speak and -- daughter audrey will address the condition of the home. Due to the age and condition of the home last year we finally decided to move forward with plans to replace the structure and rebuild a larger safer home. We all love the location.

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It's literally within walking distance to where both audrey and will work. With the high cost of real estate in central austin and the large lot, we came up with a plan to include a small garage apartment that could be leased to supplement the mortgage payment. That's -- we did talk about the property in the

back. At that time we discovered the floodplain was being modified, so I've learned about 25 and 100-year floodplains since then and how to fix our issues. Our builder and I spoke with Keith at watershed protection department about a year ago to find out what our options were. And Keith told us that basically what we would need to do to meet the requirements. We discovered we'd be able to meet all the criteria but one, pretty much, by mainly designing a new structure so that it would not adversely affect the water flow or impede the water movement. Still, the water protection board, they could not administratively approve our plans because of the lack of access. The street in front of the house, Jim Hogg, is actually in the floodplain now. And our only option would be to provide preliminary architectural plans, hire an engineer to confirm we were meeting all the other requirements, and once that was complete we'd need to get your approval to go forward. So this year we've spent over \$13,000 just to get engineering studies, had an architect design a footprint that would not only not have an adverse effect but actually create a much safer place for not only our daughter but other properties in the floodplain. After all, we are building a place for our daughter. We spent a great deal of time researching to make sure that we would not be putting Audrey or others in danger by building on the Hogg property. I have googled and tried to find but failed any historical evidence of flooding on Jim Hogg. The property sits on the Hancock branch of Shoal Creek and although there was a 100-year Shoal Creek

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flood in 1981, there was a tremendous amount of damage, no loss of life. I found where the water protection department had put together a map of that flood and it doesn't even include the Hancock branch. There was no flooding at all in our branch of that. Of course a lack of past flooding does not necessarily show lack of possibility of future flooding, so I've read and tried to comprehend the relevant parts of the extensive mapping report the city had prepared this past June by a group of consulting engineers to update the flood on that area of Shoal Creek and Hancock branch. Everything I have discovered is just that replacing the structure is actually the best thing to do. We have -- there's no question it is in a floodplain. I certainly believe that. The current structure was built over 70 years ago, though, and it has absolutely no flood proofing whatsoever. The reality is if flash flood waters actually got that high it very possibly would destroy the existing home that they live in, and undoubtedly endanger Audrey and Walt, and very possibly endanger those downstream as well. What interesting fact I learned from the city consulting engineer's report is due to the very gentle slope of the land there, the actual difference between the 25-year flood and the 500-year flood is only about a foot. And that is because the land is very flat, it's not like the water is going to come up real fast there. I've actually -- I actually attached a page from their report. It shows the height of the various flood probabilities, our lot would be on the far right edge of that graph. So the reason I find that important is that the new structure will be considerably higher than the existing structure, drastically reducing our risk of life or property. Of course the new structure will also incorporate all the latest advances in flood

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prevention to create a structure that would provide a great deal more safety to the property and the occupants of the existing building -- or than the existing building. Austin and central Texas, we are prone



to flash flooding. We're not really in a hurricane area. It's not where, you know, it -- it rains for days and you've got to get out. What happens as we've all seen the water can come up very, very fast and subsides very, very fast. So the main thing that I'm concerned about is providing a place to safely shelter in place, so that if it does come up everybody will be safe. Our wish is that you grant a variance that will allow us to construct a new residence that will provide a safe place for our daughter, her family and reduce the risk of danger to the neighbors. I have attached a plan that shows the new property overlaid over the existing structure. You'll notice that most of the increase to the property is it's a wrap around front porch. The main conditioned space of the new structure is 2106 square feet, which is not at all a large house in that area, but it's got an 820-square-foot garage apartment. And as I said, that sits on top of a carport. The -- there's more details to the plans. You see all those there. My last attachment in my packet, it's our consulting engineer's report, and I don't know much about floodplains and flood areas, but these guys do, and basically what they say is considerations and conditions of issuance. As required and adopted by the local amendment to a g of the international building code in reviewing an application for a variance the city council should consider several relevant factors: One, the danger that the material and debris may be swept into other lands resulting in further injury or damage. The proposed development results in a decrease in

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danger to both. The danger to life and property due to flooding or erosion damage. The proposed development will result in a decrease in danger to life and property due to flooding or erosion. The susceptibility of the proposed development and contents to flood damage and affects damage and future owners, the proposed development will result in a decrease in susceptibility to flood damage. The importance of the services provide that a proposed development to the community, the proposed development provides services to the community, the reduction of flood hazards to remove -- dielf to the removal of the existing structure. The compatibility of proposed development with existing anticipated development, the adjoining area -- basically we're building a structure that would fit well with the enabled. It's not a McMansion. It's 2100-square-foot with an 800-square-foot garage apartment in back. The relationship of the proposed development to the comprehensive plan, it fits exactly with what austin wants to do. We're about two or three blocks away from burnet road there where you've got mixed use housing. My goal is to keep as many people off of mopac as possible, and allowing people to have a place where they can live within walking distance to where they work is a great thing. And skipping down, a determination that the variance is the minimum necessary considering the flood hazard to afford relief. The proposed development is the minimum necessary to provide relief. The primary structure is to function as the owner's residence and rental income from the second structure will allow the servicing of debt. Audrey and will are young but you'll see, but basically it's an 800-square-foot piece of rental property and that brings another person to the neighborhood, it provides affordable housing and will help them tremendously in paying the loan. The -- one other point I'd

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like to make. You know, there's a lot of [inaudible] with -- keith with watershed protection made his

point. When I was going through and looking at the plan that the city, where they had these consulting engineers, to develop the floodplain, the adaptation of the floodplain, one thing I discovered is cresgo, who wrote the document that I just read, is exactly the same engineers that designed the floodplain, and they're saying this is a better thing to do. Thank you very much. >> Cole: Thank you, john. Next we have angelica naola. Angelica naola. >> Actually I signed up because I didn't think ed would get here in time. We're against him getting the variance just because we've seen the damage that has happened to people's lives when they are in a flood zone and they continue to live there with the onion creek flooding that occurred. So I would implore the city not give a variance and not allow the rebuild, period. I think something else should be done with that land other than a home put on it. People's lives shouldn't be put in danger. Thank you. >> Cole: Thank you, angelica. Andrea strob? Richard ba talia. Are you here? Richard has donated time to you so andrea, you have six minutes. >> Good afternoon, council members. My name is audreya strawb and I'm a born and raised automatic ite. I lived in the 5505 jim hogg house when I was 6 years old with my mother and father, until he passed away in 1997. I now currently live in that same house with my fiance, and we've resided there for the last three years. In that time we've seen the neighborhood and the whole city, in fact, undergo remodeling and new construction. We love our neighborhood and the direction it's going, and my fiance, will, and I both attended school at the surrounding public schools

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and would love for our future children to do the same. But after finding out about the entire property being in the floodplain and with the current condition in which the house is in, I don't feel safe starting a family there. To start, the flooring throughout the entire house is falling apart. There are numerous places under the carpet where the hardwood has huge holes in it, and our bathroom, the one bathroom we have, is located in the middle of the house and doesn't have any windows, so mold grows very quickly in there. There is also one small closet located inside the entire house, so when we have little ones running around we're going to need more adequate storage, and our back deck is very old and rickety and a safety hazard. With the condition the current house is it's not big enough or safe enough to start a family in. We worked with our architect, linda johnston, to create a plan to help us in our current endeavor. Since the property lies in the floodplain the new structures abide by the rules and regulations and would actually be better off if it were to flood in the future. The new larger house including the carport apartment wouldn't take up the entire property like the numerous McMansions and multi-properties popping up all over austin and three of those are actually right down the street from us. We pride ourselves in having a house that preserves the eclectic traditional feel of austin and to have a yard for our dog roxie to run around in. As a young couple trying to live in central austin it can be costly so we want to use the carport apartment to supplement our income while providing affordable housing for another austin resident. We'd like to utilize the amount of property we have while preserving the austin vibe we know and love in our neighborhood, and in addition to that we also would like to implement as many green initiatives as we can, including solar

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paneling, rain barrels, reusing old appliances in the carport living space and also planting native and drought-tolerant plants on the property. With all that said, something has to be done in our house's current state regardless, and we're hoping you all approve our proposal for a new moderately sized home to start our family in. We've put a lot of time and work in making our new home meet the current flood building standards, with increased elevation above the 100-year floodplain and to have no adverse impact. So in the worst case event of a detrimental flood, our new home will increase our safety, our neighbors' safety and most important our future family's safety. Thank you so much for your time and consideration. >> Cole: Thank you, ms. Strawb. That is the conclusion of our speakers on item no.40. I do have a question for staff. You have recommended that we deny the floodplain variance, but we heard the owners talk about some extensive flood prevention work that they plan to put into the new house, and I'm wondering if you can comment on any of that. >> When we reviewed the proposed application in comparison to the existing house, I would say that the additional flood protection that this new house would provide is an additional foot above the 100-year floodplain, the current house is 1 foot. Proposed house is two feet. The mechanical equipment, air conditioner, for example, maybe it's currently sitting at ground level in the 100-year floodplain. To the proposed development that would be required to be 1 foot above the 100-year floodplain. In addition, providing the pier and beam foundation with an open area underneath obviously allows for the flow of water, and, you

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know, it provides some protection as well. >> Cole: Okay. Any other questions? Council member riley? Okay. Council member spelman? >> Spelman: The applicant presented their consulting services presented a long list of additional considerations, which don't show up in this particular summary of findings by you or your staff. They never do, because your summary of findings is restricted to, as I understand it, five categories of things you can look at. Adverse flooding on other property. This development does not. You have to look at that. That makes sense to me. Safe access issue, and you've ruled on that. Additional occupancy in the floodplain. You're looking at square footage, which sounds like a reasonable way of estimating how many people would actually be in the floodplain. Finished floor above, and hardship conditions as defined in the building code. And more or less what they're suggesting is here's a bunch of other stuff out there which ought to be considered, but which you can't consider in the staff report. So I have two questions for you. Can you consider things like crest consulting said we should be considering? >> Yes, when staff reviews these applications, we request the applicant to address those 13 items. They do that based upon our request. Every floodplain variance we ask them to address those, because we want to know how they feel they addressed them, because staff is considering those 13, the five that are in the backup in addition to other regulations to try to look at the proposed development as a whole and how it meets, the factors of whether it's -- it should be built in the floodplain. >> Spelman: Okay, so there's a pro forma for this stuff and you have a list of 13 position, take a look at this and have somebody answer these questions for you, and you're able to take these 13 into account. You have the legal authority to take those 13 answers into account while you're coming up with a recommendation to us. >> Right. The land development code lists those 13 essentially as items to consider for a floodplain variance.

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Obviously sometimes they come to you and sometimes it's an administrative process. >> Spelman: Sure. How do you respond to their -- the crestmore consulting's listing to the responses to your 13 questions? >> I think certainly the technical merit of their responses are very valid. I think one of the items that is explicitly stated, maybe not one of those 13 but there's another section that states about financial hardship should not be considered as a reason to give a floodplain variance. And so that's something that we talk with applicants about and about, you know, not getting enough return on a property or I need to have something else in order to make it viability. It's just -- that shouldn't -- we shouldn't be considering that when we are looking -- kind of evaluating our floodplain variances, and then we present that to you for consideration. >> Spelman: And the basis for the floodplain variance is public safety? >> Correct. >> Spelman: And public safety is being violated, if it is, it doesn't matter whether there's a hardship or not, it's just somebody is going to get hurt. Tell me -- you weren't able to show us the video and I wish I had had the chance to see it because I think it might have answered my question, but if we're talking about one foot of moving water at a hundred-year flood, how difficult is it going to be, how unsafe for people if they have to get out of the house to go someplace in that one foot of moving water. Would you describe that for us? >> I can do my best and I'll work on the video for next time. >> Spelman: Okay. >> It's hard to say that it will be exactly a foot. We're predicting it to be a foot with our floodplain model. The point is of the pictures that I used to show, and may have to go back to those, the point is if it's 6 inches, if it's a foot, if it's 6 feet, you can't see the ground. And if it's at night you certainly can't see the ground and you can hardly see anything around you. And so sometimes regardless of the depth, it's still dangerous to be walking out. If it's not flooded you can see the walkway, you can see where the curb is, you can

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see the steps, the mailbox, everything that may be an obstruction. With one foot of water you may not see some of those things. Now, again, one foot of water is better than 5 feet of water, but at this section of hancock branch it is about a foot deep, and on the outer edge -- like in jim hogg avenue, the front of the property, the velocity is probably somewhere around 1 to 2 feet per second. That's not especially high, when you consider that it probably going -- it's probably going 8 feet per second in the channel. >> People walk by the creek all the time but in well more than one foot of water. Many of us have done that. Why would we consider a short walk in 1 foot of water if it's only 1 foot per second to be unsafe, relative to walking in barton creek? >> Floodwaters don't look like barton creek. >> If there's a lot of sediment you can't see where you're walking. >> Right. >> Spelman: How long would these people have if they have a hundred-year flood if they wanted to get above the in that? >> From the front of the proposed single-family house and north on to jim hogg is about 100 feet. You would add another 70 for the secondary dwelling. >> Spelman: Okay, and that secondary dwelling actually has more feet of floodplain -- higher water level they'd have to walk through, is that accurate? >> Right, the lot slopes down because the creek is in the back of the lot, and so at the secondary dwelling you go down the steps, the 100-year flood is now three feet deep and certainly more than 1 to 2 feet. Probably 8 in the cham, channel, probably 4 to 5 at that location. Relative danger and risk, one feet moving 1 to 2, three

feet moving 4 to 5. >> Spelman: Last question, I understand that our floodplain estimates are based in elevations. And we have a technical computer model basically, probably not a super

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computer model, a computer models which determines what the elevation would be at a 100-year flood and obviously there's fuzz factor around there. We're not sure about a 100-year flood, what that means based on our climate. Can you give me what -- if it would be significantly higher -- how much fuzz is there in our estimate? >> When we build these engineering models we use the best engineering data we have and it's based on historical rainfall information, and it's based upon how a channel looks at the time we do our surveys, and those assumptions, you know, we have to make some assumptions to come up with a model. One sums we make is that bridges -- assumption we make is bridges and culverts are free and we know in floods that's not always the case. That's why, and we saw it with the recent floods, is their property is outside the 100-year floodplain that got flooded and maybe some that were that didn't. Things can change. And there's no way we can predict all of what's going to change with all the obstructions that may block a bridge and send water going around another direction. But the flood information that we have at this location is very new and it's based upon the best data that we have and we're very comfortable with it. >> Spelman: I have one last question. My apologies. One of the phrases that I heard the applicant using several times was the idea of sheltering in place, not walking out, just stay where you are. The flood will come up, it will go back down again within an hour or two and you're better off staying where you are, not going away. Actually I don't think he mentioned how long a flood would last, and obviously the onion creek flood is going to be a very different situation than what we're talking about in shoal creek. I wonder if you could respond to that. What's the right thing to do if there's a flood in your neighborhood? >> I have no idea what the right thing to do is. There's no way that I can say at this point what's the best thing at that time. Sometimes sheltering in place is the best thing.

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Sometimes getting out is the best thing. It's -- it's impossible for me to say, but I will say sheltering in place is certainly an option, and in some cases it's the best option. >> Spelman: Okay. Thank you. >> Cole: Questions, council member tovo? >> Tovo: This isn't really different from the questions you asked before but I want to summarize. You did review, you and the other staff did review the provisions and the kind of extra elements that are proposed within here, and even given those you still feel there's -- there's some safety -- health and safety issues presented by adding square footage on this site? >> Yes. >> Tovo: Okay. Thank you. I'm sorry, one follow-up question. We did hear the applicant -- applicant's daughter talk about the condition of the house and some of the elements that they would like to address. Can you remind us what options the property owner has to make those upgrades to their property if it's in the floodplain? I know they can do that within a certain dollar amount, but I can't remember what that dollar amount is. >> Excellent point. Thank you for bringing that up. If this property around came in to redevelop -- remodel the existing house, then within our floodplain management regulations it says that if the improvement constitutes substantial improvement, and that definition is if the valuation of the improvements are greater than 50% of the value of the structure -- thank you, mr.

Rogers, for bringing the value of the destroyed structure, 43,712. If they were to do more than \$40,000 worth of improvements we'd be back at the same location because they'd be I remembered are to bring the property in compliance with the floodplain rules. And so if it met that substantial improvement rule, and when we look at

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these valuations, say for example if an existing house has substandard plumbing, we wouldn't count that towards improvement. Say it had substantial electric but they're redoing the electricity, we wouldn't count that. But if we come up with a substantial improvement cost and the value of the improvement is more than 50% of the value of the structure of 43,712, the entire property has to be brought into compliance and we would be back here having the same exact conversation. >> Cole: Councilman martinez? >> Martinez: I appreciate the questions from council member tovo. That's the same issue we're facing with folks in onion creek, trying to rebuild what's left of their home. Finding out when they get an estimate for repair it's more than 50% loss on the value of their property and therefore now they're going to have to come to council for a floodplain variance and be compliant with the development outside of the floodplain. You know, these cases come quite often to council and they're not always easy. I certainly think it was a compelling story from the family wanting their daughter to be able to reside in this home, but I think improvements can be made. You can fix the floor and you can make improvements to the structure, and you don't have to build a secondary structure either. I think by approving this, not only do we put one family in harm's way in the floodplain, we potentially put two, because they're wanting to build a secondary garage apartment. And so for many reasons as recited by staff and previous votes we've taken in this exact same area in this floodplain, I'm going to move to deny the request. >> Cole: Council member -- >> martinez: I'll move to adopt staff recommendation. >> Cole: Council member martinez has moved to adopt staff recommendation which was to deny the floodplain variance, and that has been seconded by council member morrison. Further discussion, council member riley. >> Riley: I take it the motion is to close the public hearing. >> Cole: Yes, the motion to close the public hearing and deny the floodplain. >> Riley: I won't support

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the motion. I think the applicant has presented a case that the improvements they're proposing would improve the safety of the site. We have an old house prone to flooding in addition to other problems and the improvements they're proposing would raise it out of the floodplain, would provide a safe new home and wouldn't cause adverse flooding on other property. Not only am I persuaded as to the safety issues but I'm also persuaded this would advance the goals of comprehensive plan by providing housing options within the central city, so I would -- I'm not going to support the motion. >> Mayor pro tem? >> Cole: Council member spelman. >> Spelman: I agree with council member riley with one minor exception, I think minor exception. I would support a motion to grant the variance for that front house. I'm very leery of putting another housing unit here even if it is up on stilts, in particular because it is -- the water would be 3 feet high if anybody needed to get out. Walking in 3 feet is a lot more difficult than one foot, and it's a longer house. It seems to me the front house, however, would constitute, as

council member riley said, an improvement in public safety and public health. >> Cole: I would just like to say that I was -- I've been moved by the testimony of the owners with regard to the outside consultants that they did and the reliance that they've placed on their work and submitted it to our staff. I think our staff has done a good job of reviewing that information and made a case that we do have some public safety issues, but I am more persuaded by the owners of the house that this would be an improvement and this is a risk that they are willing to bear, and I will not be supporting the motion. Council member riley? >> Riley: Mayor pro tem, I'd like to offer a substitute motion that we close the public hearing and approve the project as requested. >> Cole: And I'll second

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that motion. Council member spelman? >> Spelman: Council member riley, talk me into that back room. >> Riley: What we've heard is that allowing that second structure would not cause flooding issues on other properties, what we've heard also is there has been no record of flooding as far as anybody could tell at any time in any history that we can find. This is a very flat area, so the likelihood of having very fast-moving water is not -- to the extent that ever reaches this, it seems unlikely you'd have the raging torrents we obvious see with flooding conditions. I think the last time we heard about this some distance -- a similar issue, some distance east of this site, we had a description of -- that the water would actually be much calmer and it would not be -- not be that -- it would be more like the barton creek sort of situation that -- that you described. And in addition to that I'm sympathetic with -- the issues -- what I've heard about the difficulty of -- for a family to afford the site. I know that having a second income just as a practical matter is very important, especially in terms of being able to deal with rising property values, that actually having that secondary structure to provide a revenue stream is critically important in terms of actually being able to get improvements in place that are affordable for families like we've heard from today. So I am sympathetic with that, and I believe that the interests outlined in our comprehensive plan outweigh the risk, which -- of flooding issues, which I consider to be minimal in this case. >> Cole: I have a question for staff. If this motion does not fail with -- does not pass with

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the floodplain variance, aren't there specific rules about when you can bring this back? >> There are rules in the development code, and if the request is denied then the applicant would not be allowed to scoo for a similar floodplain variance for a year. -- Ask for a similar floodplain variance for a year. >> Cole: Council member tovo? >> Tovo: Mayor pro tem, we've had a few discussions today about the fact that we don't have a full council, and so I just want to let the applicant know that and the rest of the council know that I'm not going to support a floodplain variance on this application, for the reasons, really, that staff have outlined and that we've discussed here today, and I too am sympathetic of the interest of the property owner to -- to have a safer structure on that site. I hope that you'll be able to make some of those upgrades within the confines of the dollar amount that are in the city code, but I can't countenance making a decision here today that would allow for -- that would allow for additional families to be placed on that site. So I would suggest if the applicant would like, we could consider postponing, if it looks like it's going to go in that direction and allow them to -- afford them the

opportunity of having a full council here, because it seems like we're moving toward a 3-3 vote here, in which case any proposal would fail. >> Cole: I agree with you. It does look like we're moving toward a 3-3 vote and we would have the option of withdrawing the motion to substitute in the second and making a motion to postpone this item. We also have the option of voting on the item and it not passing and then the applicant would only have -- would have a whole year to have to bring this item back, which I would not like to support in light of the fact that the mayor is not here. And I know that council member martinez has some comments. >> Martinez: No, I just want

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to say, if we want to postpone this, I'll be supportive of postponing it. I don't think -- I will review this more and maybe change my mind, but I don't think I'll be compelled to change my mind, but, you know, if the mayor comes back and you guys are able to meet with the mayor -- I want you to have that opportunity at least to talk to the mayor and have him on the dais so that we can have a full vote. So I'm fine with the postponement. >> Cole: Council member riley. >> Riley: I'm prepared to withdraw my motion and offer a substitute motion that we postpone till march 20, but I did see that the applicant raising their hand. Is there an issue with the postponement that you'd like to address? >> Cole: Come forward -- ask the question. Come forward, you need to speak into the mic. >> I know that one of the concerns was the back property, because it is higher. I need to talk to the architect. If we postpone, is it possible for us to come back and basically present an option to the council to just build the front structure? , You know, with -- obviously it's going to make it a whole lot easier to be able to afford if we can build the back structure. Everything that I've seen by the consulting engineers that did the floodplain shows that it's a safe thing to do. [Inaudible] typically more shelter in place, if you can. But, you know, I heard a question from you, council member, about the fact, you supported it but you weren't sure about the back. So I'm just wanting to kind of hear if we're going to come back, what the council's feeling is. >> Spelman: Mayor pro tem? >> Cole: Council member spelman. >> Spelman: I raised this issue in the first place. I may as well help you with this. I would urge you to talk to someone on the mayor's staff. If someone on the mayor's staff has the same concern I do, you may want to go back with your architect and see if there's a way to rejigger the property to not have to build that back part. If no one on the mayor's staff raises the same objections as I did I think

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you should go forward with the proposal you've got. >> Thank you very much, council member. >> Cole: Thank you. >> Riley: With that, mayor pro tem, I'll withdraw my motion and offer a substitute motion. That we postpone till march 20. >> Cole: I'll second the motion. There is a motion to postpone item no.40 to march 20 and that's been seconded. Any further comment or discussion in hearing none, all those in favor say aye. >> Aye. >> Cole: Aye. Those opposed say no? That passes on a vote of 6-0. Council members, we have no further items on our agenda other than live music and proclamations, and I understand each of you will be taking a proclamation. >> [Inaudible] >> cole: That is not true? [Laughter] well, without objection -- without objection, this meeting of the austin city council is adjourned. But we will do live music and proclamations at 5:30.



[11:27:03]

[applause]. >> Cole: Okay. I have a few questions for you. What is your website? >> It's littlebravemusic.Com. >> And where can we buy your music? >> On the website I have links to anywhere you can buy the music.

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>> Cole: And where are you appearing next? >> I will be at holy mountain tonight to celebrate today. >> Cole: Great. We have a proclamation for you. I'm going to read it. Be it known that whereas the city of austin, texas is blessed with many creative musicians whose talent extend to virtually every music genre and whereas our music scene thrives just austin audiences support good music produced by legends, newcomers and old favorites alike. Whereas we're pleased to showcase and support our local artists, now therefore i, lee leffingwell, mayor of the live music capitol, do here by proclaim march 6, 2014 as little brave day. It is onramp's 20th anniversary. We are pleased to have you here. We have a proclamation for you. Be it known that whereas onramp was founded in 1994 in austin, texas and was one of texas' first internet operations companies devoted to providing reliable and secure connectivity that enables distributed computing and whereas to meet growing demand for its services which includes high density cal culation, cloud computing, high security hosting and disaster recovery service. On ramp is opening a new 42,000 square foot facility. And whereas the grand

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opening of onramp's second data center in austin coincides with the company's 20th anniversary and whereas we join onramp in celebrating these milestones in their history and extend our best wishes for continued success in the austin area. Now therefore, I lee leffingwell, mayor of the city of austin, do here by proclaim march 20th, 2014 as onramp's 20th anniversary and austin's grand opening day. [Applause]. >> Thank you. I wanted to thank the mayor and mayor pro tem, the councils for honoring us in this way. I'm very proud to accept this proclamation for onramp. You know, we're celebrating our 20th anniversary this year. I founded onramp in 1994. We were one of austin's first internet companies. We literally in that summer only a few companies started offering access to the internet and we were one of them. Over the years we've grown into a much different company. Today we're one of the country's leading data center companies. We help companies keep their data on the internet. We're excited to be opening their third data center. We have another run in raleigh, north carolina and we're opening another one this week in austin. So as we commemorate 20 years operating here in austin we're very excited about continuing our partnership with the city of austin for the next 20 years. I want to thank you again for this proclamation. [Applause].

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>> Cole: We have a proclamation for narcolepsy awareness day. Suddenly sleepy saturday. To be

accepted by kanika nicolson. Come on up. The proclamation reads, be it known that whereas narcolepsy is a neurological autoimmune sleep disorder in which the brain loses the ability to maintain normal sleep and wake states. And whereas narcolepsy is a lifelong illness that affects more than one in 2000 americans, it affects people of all ages, which onsets typically between the ages of 15 and 25. Whereas the symptoms of narcolepsy can cause accidents, injuries and problems with learning and working. It affects people neurologically, socially and emotionally and interferes with interpersonal relationships. And whereas march 2nd through 9th is the national sleep foundation annual sleep awareness week that celebrates the health benefits of sleep the last day of which focuses on raising awareness of narcolepsy. Now therefore i, lee leffingwell, mayor of the city of austin, do hereby proclaim march 8th, 2014 as suddenly sleepy saturday, narcolepsy awareness day. [Applause]. >> Name is kanika and this is my 10-year-old daughter and this is joy. I was diagnosed with narcolepsy in 2010 after struggling with the disorder since childhood and my daughter was diagnosed last year in 2013. A few facts about narcolepsy, like mayor leffingwell just said, narcolepsy is a lifelong illness that affects one in two thousand americans. Some of its symptoms include excessive sleepiness, sleep paralysis, hallucinations upon waking up. Due to the fact that the

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symptoms are common to many other conditions it is often missed by doctors. It can take seven years from onset to previous a proper diagnosis. The array of diagnosis for many patients along are a few reasons why it's important to raise awareness in our community. This saturday, march 8, 2014, you can join project sleep in pease park for a celebration to celebrate and raise awareness for narcolepsy and other sleep disorders. This event is hosted by project sleep and elaine garza. More details can be found on project sleep's facebook page. I would like to thank the city of austin for recognizing march 8 2014 as narcolepsy awareness day. >> Cole: Thank you. [Applause]. >> Cole: We have a proclamation for del valle isd fine arts festival. Thank you guys for coming over. The proclamation reads, be it known that whereas del valle isd serves the communities of austin, creedmoor, elmore, garfield, mustang ridge, pilot notarized, webberville and hornsby with 11,000 students in 15 campuses and whereas the del valle isd fine

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arts department is dedicated to providing an environment in which students strive to reach their maximum potential by developing a lifelong appreciation of the fine arts. And whereas the district is hosting its first ever fine arts festival to showcase the talent of dedication of 800 performers and 450 visual arts students in programs from kindergarten to 12th grade. And whereas we urge parents and community members to support the students by attending the festival and advocating for fine arts programming in their schools. I'm going to say lee leffingwell, but I'm not lee leffingwell. [Laughter] now therefore i, lee leffingwell, mayor of the city of austin, do hereby proclaim MARCH 22nd, 2014 AS The del valle isd fine arts festival. >> Thank you. >> Cole: You are welcome. Please say a few words. >> I will, thank you. The del valle fine arts event is an opportunity for over 600 or 700 performing arts students to be showcased and over 700 visual arts students to show their visual artwork. It's an opportunity to

highlight their talents and honor them and it's also an opportunity to educate their families and advocate for the fine arts and the importance of fine arts education. It's a chance to share opportunities in the austin arts organizations and programs that offer opportunities for students outside of school and to also have universities and fine arts departments share information about their programs in college and in scholarship opportunities for students. The texas commission on the arts we'll talk about careers in the arts also. So it's a fun free day for the arts in del valle and it should be a really great day for arts.

>> Cole: Anyone else want to say anything? Let's take a picture. [Applause].